

00000001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
and the STATE OF ILLINOIS,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. _____
)	
ALPHA CONSTRUCTION,)	
)	
<u>et al.</u> ,)	
)	
Defendants.)	
)	

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND.....	1
II.	JURISDICTION.....	6
III.	PARTIES BOUND.....	6
IV.	DEFINITION.....	7
V.	GENERAL PROVISIONS.....	18
VI.	PERFORMANCE OF THE WORK BY SETTLING WORK DEFENDANTS..	20
VII.	REMEDY REVIEW.....	33
VIII.	QUALITY ASSURANCE, SAMPLING AND DATE ANALYSIS.....	34
IX.	ACCESS AND INSTITUTIONAL CONTROLS.....	37
X.	REPORTING REQUIREMENTS.....	45
XI.	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS.....	47
XII.	PROJECT COORDINATORS.....	50
XIII.	ASSURANCE OF ABILITY TO COMPLETE WORK.....	52
XIV.	CERTIFICATION OF COMPLETION.....	54
XV.	EMERGENCY RESPONSE.....	59
XVI.	REIMBURSEMENT OF RESPONSE COSTS.....	60
XVII.	DISBURSEMENT OF FUNDS FROM THE EPA SPECIAL ACCOUNT FUNDS.....	69
XVIII.	DISBURSEMENT OF FUNDS FROM THE LENZ OIL SEGREGATED ACCOUNT AND OTHER OBLIGATION OF THE STATE.....	78
XIX.	INDEMNIFICATION AND INSURANCE.....	82
XX.	FORCE MAJEURE.....	85
XXI.	DISPUTE RESOLUTION.....	88

XXII.	STIPULATED PENALTIES.....	93
XXIII.	COVENANTS NOT TO SUE BY THE UNITED STATES.....	98
XXIV.	COVENANTS NOT TO SUE AND RELEASES BY THE STATE.....	104
XXV.	COVENANTS BY SETTLING DEFENDANTS TO THE UNITED STATES.....	107
XXVI.	COVENANTS NOT TO SUE AND RELEASES BY SETTLING DEFENDANTS TO THE STATE.....	110
XXVII.	EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION.....	113
XXVIII.	ACCESS TO INFORMATION.....	115
XXIX.	RETENTION OF RECORDS.....	117
XXX.	NOTICES AND SUBMISSIONS.....	119
XXXI.	EFFECTIVE DATE.....	120
XXXII.	RETENTION OF JURISDICTION.....	120
XXXIII.	APPENDICES.....	121
XXXIV.	COMMUNITY RELATIONS.....	121
XXXV.	MODIFICATION.....	121
XXXVI.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT.....	122
XXXVII.	SIGNATORIES/SERVICE.....	123
XXXVIII.	FINAL JUDGMENT.....	123

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
and the STATE OF ILLINOIS,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. _____
)	
ALPHA CONSTRUCTION,)	
)	
<u>et al.</u> ,)	
)	
Defendants.)	
)	

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Lenz Oil Services, Inc., Superfund Site ("Site") near Lemont, in DuPage County, Illinois, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Illinois (the "State") on September 30, 1999, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The Past State Settling Defendants (who are listed in Appendix D.3) previously entered into Judicial Consent Decrees with the State, dated respectively, March 30, 1988, March 28, 1989, April 25, 1989, and January 22, 1992, captioned as People v. Lenz Oil Service, Inc., et al, No. 85 CH 466, Circuit Court of DuPage County, Illinois (the "Four State Partial Consent Decrees"). Potential claims against the State by the "Past State Settling Defendants" will be resolved by the terms of this Consent Decree.

E. The State has also filed a complaint against the Settling State Defendants (who are listed in Appendix D.4) in this Court alleging that these defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and Section 22.2(f) of the Illinois Environmental Protection Act, 415 ILCS 5/22.2(f), for reimbursement of costs incurred by the State for response actions at the Site, together with accrued interest.

F. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior on September 30, 1999, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have

resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

G. The Settling Defendants that have entered into this Consent Decree do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. (The Settling Defendants are listed in Appendix D.)

H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41015.

I. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, certain potentially responsible parties, including the Settling Defendants listed in Appendix D.5 ("the RI/FS Past Participating Settling Defendants") entered into an Administrative Order by Consent, EPA Docket No. V-W-89-C-029, in September 1989, ("RI/FS AOC") under the terms of which the Remedial Investigation/Feasibility Study ("RI/FS") was performed for this Site pursuant to 40 C.F.R. § 300.430. (The potentially responsible parties who performed the RI/FS are the "RI/FS AOC Respondents".)

J. The RI/FS AOC Respondents completed an RI Report in 1994. Prior to completing the FS report, several other sampling events took

place at the Site to collect more information about the nature and extent of light non-aqueous phase liquid ("LNAPL") contamination at the Site. Results of these subsequent investigations are summarized in two reports: Technical Memorandum No. 4: LNAPL evaluation (ERM, March 1995) and Supplemental LNAPL Investigation Report (Conestoga-Rovers & Associates, October 1997). In April 1997, the RI/FS AOC Respondents completed a Supplemental RI Report and a Feasibility Study ("FS") Report, which were supplemented in October 1997.

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 29, 1998, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

L. EPA and the State entered into an administrative order on consent ("AOC") de minimis settlement with de minimis potentially responsible parties at the Site, as described in 63 Fed. Reg. 57678 (October 28, 1998), effective March 31, 1999 ("First De Minimis AOC"). The EPA settlement proceeds were deposited in the Lenz Oil Site Special Account, which contained receipts of approximately \$3,787,746.95 on April 7, 2000, and Interest of approximately \$109,867.33 on January 31, 2000, according to the EPA Cincinnati Financial Management Center's unaudited Special Account Report. The State settlement proceeds, which contained receipts of \$1,085,303.01

on June 30, 2000, were deposited in the Lenz Oil Segregated Account in the State Hazardous Waste Fund. EPA and the State are anticipating supplementing the First De Minimis AOC to finalize the de minimis settlement with 15 parties who had timely signed the First De Minimis AOC, and anticipate settling with 13 additional parties in a second de minimis AOC ("Second De Minimis AOC"). The proposed settlements which have been signed but are subject to final approval by the United States following a public comment period, provide that the proceeds from these settlements identified above, if any, will be paid (i) with respect to proceeds payable to EPA, into the Lenz Oil Site Special Account and (ii) with respect to proceeds payable to the State, into the Lenz Oil Segregated Account, for parties participating under the First De Minimis AOC, and into the Hazardous Waste Fund for parties participating under the Second De Minimis AOC.

M. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 1999, on which the State had a reasonable opportunity to review and comment, and on which the State has taken no position. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

N. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Settling Work Defendants listed in Appendix D.1 ("the Settling Work Defendants") if conducted in accordance with the requirements of this Consent Decree and its appendices.

O. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Work Defendants shall constitute a response action taken or ordered by the President.

P. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The State and Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State and upon the Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant, including, but not limited to, any

transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Work Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Work Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Work Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Work Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Work Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXXIII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Oversight Costs" shall mean that portion of Future Response Costs, including, but not limited to, direct and indirect costs, that the United States pays in connection with the Site (a) between August 31, 1999, and the effective date of this Consent Decree, (b) incurs prior to the effective date of this Consent Decree but pays after that date, or (c) incurs in monitoring and supervising Settling Defendant's performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor

costs, travel costs, and laboratory costs; provided, however, that Future Oversight Costs shall not include the costs incurred pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls and the amount of just compensation), XV (Emergency Response), XXI (costs of the dispute resolution process), and Paragraph 95 (Work Takeover) of Section XXIII (Covenants Not to Sue by the United States). Future Oversight Costs shall also include all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period after September 30, 1999, to the date of entry of this Consent Decree.

"Future Response Costs" shall mean the sum of all "Future Oversight Costs" and all direct and indirect costs incurred by the United States pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls and the amount of just compensation, if any), XV (Emergency Response), XXI (costs of the dispute resolution process), and Paragraph 95 (Work Takeover) of Section XXIII (Covenants Not to Sue by the United States).

"Illinois EPA" shall mean the State of Illinois Environmental Protection Agency and any successor departments or agencies of the State.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under

Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Interest Earned" shall mean interest earned on amounts in the Lenz Oil Site Special Account and the Lenz Oil Site Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

"Lenz Oil Site Disbursement Special Account" shall mean the special account established for the Site pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and this Consent Decree.

"Lenz Oil Site Escrow Account" shall mean the account (and any subaccounts thereof) which is being established by certain parties to this Consent Decree, and which is administered under a written Lenz Oil Escrow Agreement (Attached as Appendix E).

"Lenz Oil Segregated Account" shall mean that account established by Illinois EPA for the Site in the Illinois Hazardous Waste Fund in which settlement funds were deposited after being obtained from de minimis potentially responsible parties at the Site who entered into the First De Minimis AOC.

"Lenz Oil Site Special Account" shall mean the special account established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the First De Minimis AOC.

"Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by

commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. § 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

"Owner, Operator, or Lessee of Residential Property" shall mean a

person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the United States paid at or in connection with the Site through August 31, 1999, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Tables 8 and 9 of the ROD, and the additional performance criteria specified in the plans for remedial design, remedial action, and operation and maintenance.

"Plaintiffs" shall mean the United States and the State.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Lenz Oil Site signed on September 30, 1999, by the Regional Administrator, EPA Region 5, or his delegate, and all attachments thereto. The ROD is attached as Appendix A. For purposes of this Consent Decree, the "ROD" shall also include: (i) any

Explanation of Significant Difference issued by EPA that selects a phase I remedy within the scope of the ROD remedy 9A or contingent remedy 10 or 11 as the remedy to be implemented at the Site (in lieu of ROD alternative 9A); or (ii) any ROD amendment issued by EPA that selects a phase I remedy within the scope of the ROD remedy 9A or contingent remedy 10 or 11 as the remedy to be implemented at the Site (in lieu of ROD alternative 9A)."

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Work Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Work Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by EPA, and any amendments thereto.

"Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendants" shall mean all Parties identified in Appendix D. "Settling Work Defendants" shall mean those Settling Defendants identified in Appendix D.1 (Settling Work Defendants).

"Settling Cash Defendants" shall mean those Settling Defendants identified in Appendix D.2 (Settling Cash Defendants). "Past State Settling Defendants" shall mean those Settling Defendants identified in Appendix D.3 (Past State Settling Defendants) who previously settled with the State in the four State Partial Consent Decrees.

"Settling State Defendants" shall mean those Settling Defendants identified in Appendix D.4 (Settling State Defendants) who are settling with the State pursuant to this Consent Decree. "RI/FS Past Participating Settling Defendants" shall mean those Settling Defendants identified in Appendix D.5 (RI/FS Past Participating Settling Defendants) who previously performed the RI/FS. "RI/FS Settling Defendants" shall mean those Settling Defendants identified in Appendix D.6 (RI/FS Settling Defendants) who are settling their RI/FS obligations pursuant to this Consent Decree.

"Sewage Sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.

"Site" shall mean the Lenz Oil Services, Inc., Superfund Site, encompassing approximately 4.9 acres, located between Jeans Road on

the south, Route 83 on the west, open land on the east and the Atchison, Topeka, and Santa Fe Railroad on the north, and contiguous property which has contamination originating therefrom, near Lemont, in Du Page County, Illinois, and depicted generally on the map attached as Appendix C.

"Small Business" shall mean any business entity that employs no more than 100 individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. § 631 et seq.).

"Small Nonprofit Organization" shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

"State" shall mean the State of Illinois as represented by the Illinois Attorney General.

"State Future Litigation Costs" shall mean all costs related to the Site incurred after entry of this Consent Decree by the Illinois Attorney General's Office or Illinois EPA in connection with claims involving any person or entity who is not a Settling Defendant.

"State Future Oversight Costs" shall mean all direct and indirect costs that the State pays or incurs in monitoring and supervising Settling Work Defendants' performance of the Work to determine whether such performance is consistent with the requirements of the Consent Decree, including costs incurred in reviewing or developing plans, reports and other items pursuant to the Consent Decree, verifying the

Work, communicating and collaborating with the EPA, or otherwise implementing or overseeing the Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs and laboratory costs; provided, however, that State Future Oversight Costs shall not include any direct or indirect costs incurred by the State with respect to: (i) Section VII (Remedy Review), Section IX (Access and Institutional Controls), Section XV (Emergency Response), Section XXI (Dispute Resolution) and Paragraph 95 (Work Takeover) of this Consent Decree; (ii) State Future Litigation Costs; (iii) enforcement of this Consent Decree against Settling Defendants; and (iv) any cooperative agreement between EPA and Illinois EPA in which EPA contracts with the Illinois EPA or the State to perform any of the Work.

"State Future Response Costs" shall mean all "State Future Oversight Costs" and all direct and indirect costs of the State or its contractors with respect to the Site, including those costs incurred with respect to: (i) Section VII (Remedy Review), Section IX (Access and Institutional Controls), Section XV (Emergency Response), Section XXI (Dispute Resolution) and Paragraph 95 (Work Takeover) of this Consent Decree; (ii) State Future Litigation Costs; (iii) enforcement of this Consent Decree against Settling Defendants; and (iv) any cooperative agreement between EPA and Illinois EPA in which EPA contracts with the Illinois EPA or the State to perform any of the Work.

"State Past Response Costs" shall mean all costs (other than costs reserved in Paragraph 97.e.2. of this Consent Decree),

including, but not limited to, direct and indirect costs, that the State has incurred up to and including the date of entry of the Consent Decree in connection with the Site pursuant to environmental laws, including, without limitation, Sections 107 and 113 of CERCLA and Section 22.2(f) of the Illinois Environmental Protection Act, 415 ILCS 5/22.2(f), plus all statutory interest thereon.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Pre-Design Data Collection Investigation, pre-design, Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Work Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Section 22.2(f) of the Illinois Environmental Protection Act, 415 ILCS 5/22.2(f).

"Work" shall mean all activities Settling Work Defendants are required to perform under this Consent Decree, except those required by Section XXIX (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Work Defendants, to reimburse certain response costs of the Plaintiffs, and to resolve the claims among the parties, as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. Settling Work Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Work Defendants and approved by EPA pursuant to this Consent Decree. Settling Cash Defendants, Settling State Defendants and RI/FS Settling Defendants shall each pay certain sums specified in this Consent Decree to the Lenz Oil Site Escrow Account. Settling Work Defendants shall also reimburse the United States and the State for certain Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Work Defendants to finance and perform the Work and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Work Defendants to implement the requirements of this Consent Decree, the remaining Settling Work Defendants shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Settling Work Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Work Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Work Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Work Defendants may seek relief under the provisions of Section XX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTling WORK DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Work Defendants pursuant to Sections VI (Performance of the Work by Settling Work Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within 45 days after the lodging of this Consent Decree, Settling Work Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Work Defendants propose to change a Supervising Contractor, Settling Work Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Work Defendants in writing. Settling Work Defendants shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice

of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Work Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Work Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Work Defendants may seek relief under the provisions of Section XX (Force Majeure) hereof.

10. Remedial Design.

a. Within 60 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 9, or within 30 days of entry of the Consent Decree, whichever is later, Settling Work Defendants shall submit to EPA and the State a Pre-Design Data Collection ("PDDC") Work Plan. The PDDC Work Plan shall describe proposed investigations and evaluations of the ROD selected and contingent remedies, and an appropriate sampling/monitoring program, which will be initiated during the pre-design phase. The PDDC Work Plan shall fully document the site-specific conditions and facts addressing the CERCLA remedy selection criteria for the ROD selected and contingent remedies. The PDDC Work Plan shall also describe a sampling/monitoring program that will be initiated during pre-design sufficient to fully establish the current areal extent of

contamination and site conditions necessary to investigate and evaluate the ROD selected and contingent remedies. In addition, the PDDC Work Plan shall also establish a schedule for Settling Work Defendants' implementation of the PDDC investigations and the submission of the PDDC Investigations and Studies Report. Specifically, the PDDC Work Plan shall include plans and schedules for implementing all remedial pre-design tasks identified in the SOW, including but not limited to, plans and schedules for the completion of: (1) a design sampling and analysis plan (including, but not limited to, a PDDC Quality Assurance Project Plan (QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) a treatability study; and (3) the schedule for activities and submittals. When EPA approves the PDDC Work Plan, the plan shall be incorporated into and become enforceable under this Consent Decree. When the Settling Work Defendants submit the PDDC Work Plan, they shall also submit to EPA and the State the Health and Safety Plan for field activities required by the PDDC Work Plan, which must conform to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. When EPA approves the PDDC Work Plan, after reasonable opportunity for review and comment by the State, and the Settling Work Defendants submit the Health and Safety Plan for all activities to EPA and the State, the Settling Work Defendants shall implement the PDDC Work Plan. The Settling Work Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved PDDC Work Plan, including a PDDC Investigations and Studies

Report in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Work Defendants shall not commence Pre-Design Data Collection activities at the Site prior to approval of the PDDC Work Plan.

c. Forty-five days after the EPA approves the PDDC Investigations and Studies Report and EPA identifies the phase I remedial action to be constructed, Settling Work Defendants shall submit to EPA and the State a work plan for the design of the phase I Remedial Action at the Site ("phase I Remedial Design Work Plan" or "phase I RD Work Plan"). For purposes of this provision, "identifies" means EPA providing written notice to the Settling Work Defendants to proceed with either ROD alternative 9A, or ROD contingent remedy 10 or 11 as provided in a ROD Explanation of Significant Difference or a ROD amendment. The phase I Remedial Design Work Plan shall provide for design of the phase I remedy set forth in the ROD and for achievement of the Performance Standards, in accordance with the requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the phase I Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time they are required to submit the phase I Remedial Design Work Plan, the Settling Work Defendants shall also submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

d. The phase I Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a phase I Remedial Design Quality Assurance Project Plan (QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) further treatability studies, if necessary; (3) a preliminary design submittal; (4) an intermediate design submittal (if required by EPA); (5) a pre-final/final design submittal; (6) a Construction Quality Assurance Plan; and (7) a flood way/floodplain control plan. In addition, the phase I Remedial Design Work Plan shall include a schedule for completion of the phase I Remedial Action Work Plan.

e. Upon approval of the phase I Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Work Defendants shall implement the phase I Remedial Design Work Plan. The Settling Work Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved phase I Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

f. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria and specific performance standards; (2) results of treatability studies; (3) results of

additional field sampling, PDDC work and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

g. The intermediate design submittal, if required by EPA or if independently submitted by the Settling Work Defendants, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

h. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) draft Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

i. Within 45 days after EPA notifies the Settling Work Defendants to proceed with the design and construction of phase II, the Settling Work Defendants shall submit to EPA and the State a work plan for the design of the phase II Remedial Action at the Site ("phase II Remedial Design Work Plan"). The phase II Remedial Design Work Plan shall provide for design of the phase II remedy set forth in the ROD, in accordance with the SOW.

11. Remedial Action.

a. Within 45 days after the approval of the phase I design submittal, Settling Work Defendants shall submit to EPA and the State, a work plan for the performance of the phase I Remedial Action at the Site ("phase I Remedial Action Work Plan"). The phase I Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the phase I Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, after a reasonable opportunity for review and comment by the State, the phase I Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the phase I Remedial Action Work Plan, Settling Work Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the phase I Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The phase I Remedial Action Work Plan shall include the following: (1) the schedule for completion of the phase I Remedial Action; (2) method for selection of the contractor; (3) schedule for developing, submitting and implementing other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) a surface and subsurface water monitoring plan(s); (6) methods for satisfying permitting

requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the phase I Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The phase I Remedial Action Work Plan also shall include a schedule for implementation of all phase I Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Work Defendants' phase I Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the phase I Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Work Defendants shall implement the activities required under the phase I Remedial Action Work Plan. The Settling Work Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved phase I Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Work Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the phase I Remedial Action Work Plan.

d. Before the pre-final construction inspection required by the SOW, Settling Work Defendants shall submit to EPA and the State a final Operation and Maintenance Plan ("O&M Plan") addressing both implementation and long term maintenance of the phase I Remedial

Action. The O&M Plan shall conform to the requirements for such a plan specified in the SOW. Upon approval of the O&M Plan by EPA, after a reasonable opportunity for review and comment by the State, the O&M Plan shall be incorporated into and become enforceable under this Consent Decree.

e. Upon approval of the O&M Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Work Defendants shall implement the activities required by the O&M Plan. The Settling Work Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

f. If the applicable standards for groundwater quality specified in the ROD Table 7, are exceeded for a specified number of sampling events (to be determined by EPA, after Settling Work Defendants construct the phase I Site remedy and monitor for at least one year), the ROD and the SOW require the Settling Work Defendants to construct and operate a groundwater collection and treatment system. Within 30 days after completing one year of monitoring and annually thereafter, until a phase II remedy is implemented, the Settling Work Defendants will prepare and submit a report regarding the monitoring results. Until an alternate phase II remedy is selected, such report shall include recommendations regarding the phase II groundwater remedy implementation and alternatives. If EPA determines after a reasonable opportunity for review and comment by the State, that

constructing and operating a groundwater collection and treatment system is required pursuant to the SOW, EPA will notify the Settling Work Defendants. Within 45 days following EPA notice that a groundwater collection and treatment system is required, the Settling Work Defendants shall submit a phase II Remedial Design Work Plan setting forth a plan for the design of the groundwater collection and treatment system. Upon approval of the phase II Remedial Design Work Plan by EPA under Section XI of this Consent Decree, after a reasonable opportunity for review and comment by the State, Settling Work Defendants shall implement the activities required under the phase II Remedial Design Work Plan.

g. Within 45 days after the approval of the phase II Remedial Design, Settling Work Defendants shall submit to EPA and the State, a work plan for the performance of the phase II Remedial Action at the Site ("phase II Remedial Action Work Plan"). The phase II Remedial Action Work Plan shall provide for construction and implementation of the phase II remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the phase II Remedial Design Work Plan and approved by EPA. In addition, the phase II Remedial Action Work Plan shall include a schedule for completion of the phase II Remedial Action.

12. Settling Work Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved

and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards, or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans; provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of Paragraphs 13, 49 and 50, only, the "scope of the remedy selected in the ROD" is:

(1) consistent with the scope and magnitude of ROD alternatives 9A, 10, or 11, removal of surface contaminants by excavation, and

(2) consistent with the scope and magnitude of ROD alternatives 9A, 10, or 11, removal of subsurface contaminants:

(a.) by excavation, or

(b.) by vacuum enhanced recovery or by low temperature thermal desorption, if EPA notifies the Settling Work Defendants to implement either ROD contingent remedy 10 or 11 as provided in a ROD Explanation of Significant Difference or ROD amendment pursuant to Paragraphs 10 and 11 of the Consent Decree, and,

(3) consistent with the scope and magnitude of ROD alternatives 9A, 10, or 11, treatment and disposal off-site of

recovered concentrated liquid contaminants, and, if ROD alternative 9A is implemented, solidification and containment of other recovered contaminated materials on-site in a corrective action management unit, and,

(4) consistent with the scope and magnitude of the ROD phase II remedy, collection and treatment of contaminated subsurface waters, discharge of the treated waters, and disposal of the contaminants.

c. If Settling Work Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXI (Dispute Resolution), Paragraph 77 (Record Review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Work Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

14. Settling Work Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

15. Settling Work Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Work Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material will be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Work Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Work Defendants following the award of the contract for Remedial Action construction. The Settling Work Defendants shall provide the information required by Paragraph 15a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

16. Periodic Review. Settling Work Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

17. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

18. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraphs 91 or 92 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraphs 91 or 92 of Section XXIII (Covenants Not To Sue by the United States) are

satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 77 (Record Review).

20. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

21. Settling Work Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087)), and subsequent amendments to such guidelines upon notification by EPA to Settling Work Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Work Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents.

If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Work Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Work Defendants in implementing this Consent Decree. In addition, Settling Work Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Work Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto before or during the course of implementing this Consent Decree, and Technical Methods for Evaluating Solid Waste Physical Methods SW 846, 3d Edition dated November 1986, and any amendments made thereto before or during the course of the implementation of this Consent Decree. Settling Work Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Work Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in

accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Work Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Work Defendants shall notify EPA and the State not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Settling Work Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Settling Work Defendants' implementation of the Work.

23. Settling Work Defendants shall submit to EPA three copies in accordance with the SOW, and shall submit to the State, two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Work Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise. At the request of EPA's Project Coordinator, the Settling Work Defendants also shall transmit an electronic copy of such results to EPA and the State, in a form and manner agreed to by EPA's Project Coordinator and the Settling Work Defendants.

24. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the Settling Work Defendants, the United States on behalf of EPA, and the State, as well as their representatives (including contractors), with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations relating to contamination at or near the Site, including but not limited to the surface or subsurface erection or placement of physical or mechanical objects necessary to those investigations;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Implementing the Work pursuant to the conditions set forth in Paragraph 95 (Work Takeover) of this Consent Decree.
- (7) Implementing the long-term operation and maintenance of the remedy pursuant to Paragraph 11;

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Work Defendants or their agents, consistent with Section XXVIII (Access to Information);

(9) Assessing Settling Work Defendants' compliance with this Consent Decree; and

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree, including but not limited to the prohibitions and restrictions set forth in Paragraph 25.b. below.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in a manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Except as specifically authorized by EPA in writing:

(1) There shall be no excavating for any purpose (e.g., building foundation, landscaping) of cover soils to within one foot of the soil strata in which Site contaminants exist. The Settling Work Defendants shall provide such owner Settling Defendant information identifying the areas of contamination, the depth below the surface that these contaminants exist and other relevant information;

(2) To the extent that excavation occurs that is consistent with Paragraph 25.b.1., there shall be no excavating for landscaping, construction or other activities which removes soil from any portion

of the property without promptly returning the elevation of these excavated areas to at least the pre-excavation soil elevation; and

(3) There shall be no use or extraction of groundwater.;

c. execute and record in the Recorder of Deeds of DuPage County, State of Illinois, environmental protection easements and/or declaration of restrictive covenants, running with the land, that (i) grant a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a. of this Consent Decree, and (ii) grant the right to enforce the land/water use restrictions listed in Paragraph 25.b. of this Consent Decree, or other restriction that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendant(s) shall grant the access rights and the rights to enforce the land/water use restrictions in favor of an entity(ies) approved by EPA which shall be limited to one or more of: a governmental entity, the Settling Work Defendants, or a viable and adequately capitalized entity(ies) proposed by the Settling Work Defendants. The Settling Work Defendants or other entity(ies) that obtains rights under the environmental protection easements and/or declaration of restrictive covenants shall not terminate, modify, or convey them without EPA's prior written approval. The Settling Work Defendants or other entity(ies) that obtains these environmental protection easements and/or declaration of restrictive covenants shall monitor the property regularly and act to ensure compliance with the land use restrictions.

If EPA requests the imposition of environmental protection easements and/or declaration of restrictive covenants, the Settling Work Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

(1) Draft environmental protection easements and/or declaration of restrictive covenants, in a form acceptable to EPA, that is enforceable under the laws of the State of Illinois, free and clear of all prior liens and encumbrances (except as approved by EPA).

(2) A current title commitment or report.

(3) The identification of the entity(ies) that will own the environmental protection easements and/or declaration of restrictive covenants and to the extent requested by EPA, information regarding the viability and capitalization of the proposed holder of the easements and covenants. Such easement and covenant holder must be a Settling Defendant or enter into a written agreement with EPA to be bound by the provisions of this Section. Any such written agreement shall be made a part of this Consent Decree.

Within 15 days of EPA's approval of the environmental protection easements and/or declaration of restrictive covenants, the Settling Work Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the environmental protection easements and/or declaration of restrictive covenants with the Recorder of Deeds of DuPage County. Within 15 days of Settling Work Defendants' receipt of the recording of the environmental protection easements and/or declaration of restrictive

covenants, the Settling Work Defendants shall provide EPA with final title evidence and a certified copy of the original recorded environmental protection easements and/or declaration of restrictive covenants showing the clerk's recording stamps.

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, the Settling Work Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Work Defendants, the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a. of this Consent Decree;

b. an agreement, enforceable by the Settling Work Defendants, to abide by the obligations and restrictions established by Paragraph 25.b. of this Consent Decree; and,

c. the execution and recordation with the Recorder of Deeds of DuPage County, State of Illinois, of environmental protection easements and/or a declaration of restrictive covenants, running with the land, that (i) grant a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a. of this Consent Decree, and (ii) grant the right to enforce the land/water use restrictions listed in Paragraph 25.b. of this Consent Decree, or

other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The environmental protection easements and/or declaration of restrictive covenants shall be granted in favor an entity(ies) approved by EPA which shall be limited to of one or more of: a governmental entity, the Settling Work Defendants, or a viable and adequately capitalized entity(ies) proposed by the Settling Work Defendants. The holder of the environmental protection easement and declaration of restrictive covenants, shall not terminate, modify or convey them without EPA's prior written approval. The holder of these easements and/or covenant rights shall monitor the property regularly and act to ensure compliance with the land use restrictions. If EPA requests the recording of environmental protection easements and/or declaration of restrictive covenants, the Settling Work Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

(1) A draft environmental protection easement and declaration of restrictive covenants, in a form acceptable to EPA, that is enforceable under laws of the State of Illinois, free and clear of all prior liens and encumbrances (except as approved by EPA).

(2) A current title commitment or report.

(3) The identification of the entity(ies) that will own the environmental protection easements and/or declaration of restrictive covenants and to the extent requested by EPA, information regarding the viability and capitalization of the proposed holder of the

easements and covenants. Such easement and covenant holder must be a Settling Defendant or enter into a written agreement with EPA to be bound by the provisions of this Section. Any such written agreement shall be made a part of this Consent Decree.

Within 15 days of EPA's approval of the environmental protection easements and/or declaration of restrictive covenants, the Settling Work Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the environmental protection easements and/or declaration of restrictive covenants with the Recorder of Deeds of DuPage County. Within 15 days of Settling Work Defendants' receipt of the recording of the environmental protection easements and/or declaration of restrictive covenants, the Settling Work Defendants shall provide EPA with final title evidence and a certified copy of the original recorded environmental protection easements and/or declaration of restrictive covenants showing the clerk's recording stamps.

27. For purposes of Paragraph 26 of this Consent Decree, "best efforts" includes the paying of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive covenants. If any environmental protection easements and/or declaration of restrictive covenants required by Paragraphs 26.a. or 26.b. of this Consent Decree are not obtained within 45 days of EPA's request, or any easements or restrictive covenants required by Paragraph 26.c. of this Consent Decree are not submitted to EPA in draft form within 45 days of EPA's

request, the Settling Work Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that the Settling Work Defendants have taken to attempt to comply with Paragraph 26 of this Consent Decree. The United States may, as it deems appropriate, assist the Settling Work Defendants in obtaining environmental protection easements and/or declaration of restrictive covenants, either in the form of contractual agreements or in the form of easements and/or covenants running with the land. The Settling Work Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or environmental protection easements and/or declaration of restrictive covenants including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

28. If EPA determines that environmental protection easements and/or declaration of restrictive covenants in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Work Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

29. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require environmental protection easements and/or declaration of restrictive covenants,

including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations. For the purposes of Paragraph 25 through Paragraph 29 of this Consent Decree, EPA in its sole and unreviewable discretion may determine whether to require environmental protection easements, declaration of restrictive covenants, or both. Such determination shall not be subject to the dispute resolution provisions of this Consent Decree or to judicial review.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Work Defendants shall submit to EPA and the State five copies (three to EPA and two to the State) of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Work Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work,

and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Work Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Work Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the later of the first full month after issuance of the notice to proceed pursuant to Paragraph 9.a. of this Consent Decree or entry of this Consent Decree, until EPA notifies the Settling Defendants pursuant to Paragraph 49.c. of Section XIV (Certification of Completion). If requested by EPA or the State, Settling Work Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

31. The Settling Work Defendants shall notify EPA and the State of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans; no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Settling Work Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Work Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the

event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the onset of the event referred to in Paragraph 32, Settling Work Defendants shall furnish to Plaintiffs a written report, signed by the Settling Work Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Work Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Work Defendants shall submit three copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Work Defendants shall simultaneously submit two copies of all such plans, reports and data to the State.

35. All reports and other documents submitted by Settling Work Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Work Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Work Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is

required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Work Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Work Defendants at least one notice of deficiency and an opportunity to cure within 21 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Work Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission had a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXII (Stipulated Penalties).

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Work Defendants shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXII, shall accrue during the 21 day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Work Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Work Defendants of any liability for stipulated penalties under Section XXII (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Work Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Work Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XXI (Dispute Resolution).

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Work Defendants

shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Work Defendants invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXI (Dispute Resolution) and Section XXII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXII.

41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Settling Work Defendants, the State and EPA will notify each other, in writing, of the name, address, e-mail address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five working

days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Work Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Work Defendants' Project Coordinator shall not be an attorney for any of the Settling Work Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis,

unless otherwise agreed.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, Settling Work Defendants shall establish and maintain financial security in the amount of \$8,400,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. trust fund;
- d. The Lenz Oil Site Escrow Account established pursuant to this Consent Decree to the extent that funds are available for the Work;
- e. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Work Defendants;
- f. A demonstration that one or more of the Settling Work Defendants satisfy the requirements of 40 C.F.R. § 264.143(f).

46. If the Settling Work Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45.e. of this Consent Decree, Settling Work Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Work Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45.e. or 45.f., they shall resubmit sworn statements conveying the

information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Work Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Work Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

47. Each year following the entry of this Consent Decree, if Settling Work Defendants can show that the amount of financial security required under Paragraph 45, \$8,400,000, exceeds (a) the ROD-estimated remedy cost for remedy 10 or 11, if that remedy is to be implemented as provided by Paragraphs 10 or 11, above, less the amount remaining in the Lenz Oil Site Disbursement Special Account available for the remedy being implemented pursuant to Paragraph 59, or (b) the estimated cost to complete the remaining Work, less the Lenz Oil Site Disbursement Special Account available for that remedy pursuant to Paragraph 59, Settling Work Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, request a reduction in the amount of the financial security provided under this Section by the amount by which the sum of paid amounts exceeds the estimated cost of the remaining work to be performed. Settling Work Defendants shall submit a proposal for such

reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Work Defendants may reduce the amount of the security only in accordance with the final administrative or judicial decision resolving the dispute.

48. Settling Work Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Work Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action.

a. The Settling Work Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Work Defendants, EPA and the State, within 90 days after Settling Work Defendants conclude that either of the following two conditions (the "Certification Conditions") has been met:

(1) the Remedial Action has been fully performed (without constructing and operating the groundwater extraction and treatment system specified in the ROD and addressed in Paragraph 11.f. of this Consent Decree), the Performance Standards have been attained, and relevant long term monitoring results demonstrate no exceedances of any of the applicable standards for groundwater quality set forth

in Table 7 of the ROD for five consecutive years, unless otherwise requested by the Settling Work Defendants and approved by EPA; or

(2) the Remedial Action has been fully performed (including constructing and operating the groundwater extraction and treatment system specified in the ROD and addressed in Paragraph 11.f. of this Consent Decree) and the system's Performance Standards, except for the applicable standards for groundwater quality set forth in Table 7 of the ROD, have been attained and maintained for at least two consecutive years, unless otherwise requested by the Settling Work Defendants and approved by EPA.

b. If, after the pre-certification inspection, the Settling Work Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Work Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Work Defendant or the Settling Work Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information,

including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the relevant Performance Standards under Paragraphs 49.a.1. or 49.a.2. have not been achieved, EPA will notify Settling Work Defendants in writing of the activities that must be undertaken by Settling Work Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve such Performance Standards under Paragraphs 49.a.1. or 49.a.2. Provided, however, that EPA may only require Settling Work Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Work Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Work Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the

Remedial Action has been performed in accordance with this Consent Decree and that the relevant Performance Standards under Paragraphs 49.a.1. or 49.a.2., have been achieved, EPA will so certify in writing to Settling Work Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXIII (Covenants Not to Sue by the United States). Certification of Completion of the Remedial Action shall not affect Settling Work Defendants' remaining obligations under this Consent Decree.

d. If EPA issues a Certification of Completion of the Remedial Action based on satisfaction of the Certification Condition set forth in Subparagraph a.(1) of this Paragraph 49, Settling Defendants shall nonetheless remain obligated under this Consent Decree to implement the groundwater extraction and treatment remedy specified by the ROD and SOW (and to attain and maintain all Performance Standards relating to the groundwater extraction and treatment system) if required pursuant to the ROD, the SOW and Paragraph 11.f. of this Consent Decree.

50. Completion of the Work.

a. Within 90 days after Settling Work Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Work Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Work Defendants, EPA and the State. If, after the pre-certification inspection, the Settling Work Defendants still believe that the Work has been fully performed, Settling Work Defendants shall submit a written report by a

registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Work Defendant or the Settling Work Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Work Defendants in writing of the activities that must be undertaken by Settling Work Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Work Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Work Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Work Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Work Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Work Defendants shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Work Defendants shall notify the EPA Emergency Response Unit, Region 5. Settling Work Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Work Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State take such action instead, Settling Work Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVI

(Reimbursement of Response Costs).

52. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Sections XXIII and XXIV (Covenants Not to Sue by the United States and Covenants Not to Sue and Releases by the State).

XVI. REIMBURSEMENT OF RESPONSE COSTS

53. Payments to the Lenz Oil Site Escrow Account.

a. No later than 30 days after the lodging of this Consent Decree, each Settling Cash Defendant which has not already done so shall deposit the amount listed beside its name on Appendix D.2 (Settling Cash Defendants) into the Lenz Oil Site Escrow Account established pursuant to this Consent Decree. The amounts to be paid by the Settling Cash Defendants represent, inter alia, such party's contributions toward the costs associated with the Work and the related obligations of the Settling Work Defendants under this Consent Decree.

b. No later than 30 days after the lodging of this Consent Decree, each Settling State Defendant which has not already done so shall deposit the amount listed beside its name on Appendix

D.4 (Settling State Defendants) into the Lenz Oil Site Escrow Account established pursuant to this Consent Decree.

c. No later than 30 days after the lodging of this Consent Decree, each RI/FS Settling Defendant which has not already done so shall deposit the amount listed beside its name on Appendix D.6 (RI/FS Settling Defendants) into the Lenz Oil Site Escrow Account established pursuant to this Consent Decree.

54. Payment of Certain Future Response Costs by Settling Work Defendants. Settling Work Defendants shall reimburse the EPA Hazardous Substance Superfund for unreimbursed Future Response Costs not inconsistent with the National Contingency Plan as follows:

a. Settling Work Defendants shall reimburse the EPA Hazardous Substance Superfund for unreimbursed Future Oversight Costs not inconsistent with the National Contingency Plan to the extent such costs exceed the amounts identified below:

i. If EPA determines that the Settling Work Defendants are to implement ROD remedy alternative 9A phase I, Settling Work Defendants shall pay EPA for unreimbursed Future Oversight Costs incurred by EPA in excess of \$1,864,658 during construction of phase I of ROD remedy alternative 9A; and, if EPA determines that Settling Work Defendants shall implement phase II of ROD remedy alternative 9A (groundwater extraction and treatment system), then Settling Work Defendants shall pay EPA for unreimbursed future oversight costs incurred by EPA after EPA has issued a notice to implement phase II of the remedy, in excess of \$2,189,658.

ii. If EPA determines that the Settling Work

Defendants are to implement ROD contingent remedy 10, Settling Work Defendants shall pay EPA for unreimbursed Future Oversight Costs incurred by EPA in excess of \$739,658 during construction of phase I of ROD contingent remedy 10; and, if EPA determines that Settling Work Defendants shall implement phase II of ROD contingent remedy 10 (groundwater extraction and treatment system), then Settling Work Defendants shall pay EPA for unreimbursed future oversight costs incurred by EPA after EPA has issued a notice to implement phase II of the remedy, in excess of \$1,064,658.

iii. If EPA determines that the Settling Work Defendants are to implement ROD contingent remedy 11, Settling Work Defendants shall pay EPA for unreimbursed Future Oversight Costs incurred by EPA in excess of \$889,658 during construction of phase I of ROD contingent remedy 11; and, if EPA determines that Settling Work Defendants shall implement phase II of ROD contingent remedy 11 (groundwater extraction and treatment system), then Settling Work Defendants shall pay EPA for unreimbursed future oversight costs incurred by EPA after EPA has issued a notice to implement phase II of the remedy, in excess of \$1,214,658.

b. Settling Work Defendants shall reimburse the EPA Hazardous Substance Superfund for all unreimbursed Future Response Costs other than Future Oversight Costs not inconsistent with the National Contingency Plan.

c. The United States will send Settling Work Defendants a bill requiring payment of Future Response Costs (including Future Oversight Costs) with an EPA Itemized Cost Summary which includes

direct and indirect costs incurred by EPA and its contractors, and a Department of Justice cost summary which would reflect costs incurred by DOJ and its contractors, on a periodic basis. Settling Work Defendants shall make all payments within 30 days of Settling Work Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. The Settling Work Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #05BN, the DOJ case number 90-11-3-1767, and the name and address of the party making payment. The Settling Work Defendants shall send the check(s) to:

U.S. EPA, Region 5,
ATTN: Superfund Accounting,
P.O. Box 70753,
Chicago, Illinois 60673-0753,

and shall send copies of the check(s) to the United States as specified in Section XXX (Notices and Submissions).

In the alternative, the Settling Work Defendants may make any payment required by this Paragraph by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Environmental Protection Agency, Region 5 account in accordance with current electronic funds transfer procedures, referencing electronic funds routing number 071000013, Bank One account number 1113399, Bank One Plaza, Chicago, Illinois, and also referencing the Lenz Oil Site, Lemont, Illinois, the DOJ case number 90-11-3-1767, and the EPA Region and Site/Spill ID # 05BN. Payment shall be made in accordance with any additional instructions provided to the Settling Work Defendants by the EPA following lodging

of the Consent Decree. Any payments received by the EPA after 4:00 P.M. (Central Time) will be credited on the next business day.

Settling Work Defendants shall send notice that such payment has been made to the United States as specified in Section XXX (Notices and Submissions) and to the EPA, Region 5, Financial Management Branch, 77 West Jackson Boulevard, Chicago, Illinois, RE: Lenz Oil Site.

d. The total amount to be paid by Settling Work Defendants pursuant to Subparagraphs 54.a. and 54.b. shall be deposited in the Lenz Oil Site EPA Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

55. a. Payment of Certain State Future Response Costs by Settling Work Defendants. Except as provided in Paragraph 55.b., Settling Work Defendants shall reimburse the State, up to an amount that shall not exceed \$150,000, for all State Future Response Costs which are not inconsistent with the National Contingency Plan ("State Reimbursement Cap").

b.(1) Settling Work Defendants shall not be responsible for and shall not be required to reimburse the State for any of the following costs: (i) State Future Litigation Costs; (ii) State Future Oversight Costs incurred by the Illinois Attorney General's Office; and (iii) costs subject to Paragraph 97.d. of this Consent Decree.

b.(2) Settling Work Defendants shall reimburse the following State Future Response Costs, which are not inconsistent with

the National Contingency Plan, without regard to the State Reimbursement Cap (it being understood that such costs shall not be applied towards the State Reimbursement Cap): (i) Section XV (Emergency Response); (ii) Paragraph 95 of this Consent Decree (Work Takeover); (iii) cooperative agreements between EPA and Illinois EPA in which EPA contracts with Illinois EPA or the State to perform the Work; and (iv) subject to 55.b.(3), costs incurred in enforcing this Consent Decree against Settling Defendants.

b.(3) Settling Work Defendants shall reimburse State Future Response Costs for matters covered under this Consent Decree that are incurred by the Illinois Attorney General's Office pursuant to Section XXI (Dispute Resolution), which are not inconsistent with the National Contingency Plan, without regard to the State Reimbursement Cap (it being understood that such costs shall not be applied towards the State Reimbursement Cap). Settling Work Defendants shall reimburse State Future Response Costs for matters covered under this Consent Decree that are incurred by the Illinois EPA pursuant to Section XXI (Dispute Resolution), which are not inconsistent with the National Contingency Plan, regardless of whether the Reimbursement Cap has been met; provided however, that in the event that the Reimbursement Cap has not been reached, Illinois EPA's costs shall be applied to the Reimbursement Cap as the costs are incurred.

b.(4) In the event that the Settling Work Defendants prevail in challenging, through dispute resolution or any other proceeding, whether in whole or in part, any action taken by the State pursuant to this Consent Decree, then the Settling Work Defendants

shall not be required to reimburse the State for the portion of the State's costs (including dispute resolution costs), in whole or in part, which were successfully challenged.

c. Illinois EPA shall send Settling Work Defendants a statement on a quarterly basis identifying the amount of State Future Response Costs along with an itemized summary of direct and indirect costs incurred by the State or its contractors for which reimbursement is sought. Settling Work Defendants shall make all payments within 45 days of Settling Work Defendants' receipt of each statement, subject to the provisions of Paragraph 56. The Settling Work Defendants shall make all payments by certified or cashiers' check or checks made payable to the Illinois EPA for deposit in the Illinois Hazardous Waste Fund. The Settling Work Defendants shall send payment to:

Illinois Environmental Protection Agency
Fiscal Services Section, Accounts Receivable Unit
P.O. Box 19276
1026 North Grand Avenue East
Springfield, Illinois 62794-9276

Payment shall be deemed to be made upon mailing with the U.S. Postal Office, with proper postage prepaid.

56. Settling Work Defendants may contest payment of any Future Response Costs or State Future Response Costs under Paragraphs 54 or 55 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being

disputed) pursuant to Section XXX (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs or State Future Response Costs and the basis for objection. In the event of an objection, the Settling Work Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States or State Future Response Costs to the State in the manner described in Paragraph 54 and 55. Simultaneously, the Settling Work Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or State Future Response Costs. The Settling Work Defendants shall send to the United States, as provided in Section XXX (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Response Costs or State Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with the establishment of such escrow account pursuant to this Paragraph, the Settling Work Defendants shall initiate the dispute resolution procedures in Section XXI (Dispute Resolution). If the United States or the State prevails in the dispute, within five days of the resolution of the dispute, the Settling Work Defendants shall pay the sums due (with accrued interest) to the United States or the State in the manner described in Paragraphs 54 and 55. If the

Settling Work Defendants prevail concerning any aspect of the contested costs, the Settling Work Defendants shall receive that portion of the costs (plus associated accrued interest) for which they prevailed; if Settling Work Defendants do not prevail in part in any aspect of the contested costs, they shall pay that portion of the costs (plus associated accrued interest) to the United States or the State (if the State costs are disputed) in the manner described in Paragraphs 54 and 55. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Work Defendants' obligation to reimburse the United States or the State for their Future Response Costs or State Future Response Costs.

57. Interest on late payments. Each Settling Cash Defendant that fails to fulfill the payment requirements of Paragraph 53 within the time specified in Paragraph 53, shall pay the Settling Work Defendants Interest on the unpaid balance. If Settling Work Defendants fail to fulfill the payment requirements of Paragraph 55 within the time specified in Paragraph 55, they shall pay Interest to the State on the unpaid balance. In the event that the payments required by Paragraph 54 are not made within 30 days of the Settling Work Defendants' receipt of the bill, Settling Work Defendants shall pay the United States Interest on the unpaid balance. The Interest to be paid on payments by the Settling Cash Defendants and Settling Work Defendants under this Paragraph shall begin to accrue on the date payment is due under Paragraphs 53, 54, or 55, respectively. The

Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all Interest payments on principal required by this Paragraph in the manner described for the respective principal payment in Paragraphs 53, 54, and 55.

XVII. DISBURSEMENT OF FUNDS FROM THE EPA SPECIAL ACCOUNT FUNDS

58. Creation of Lenz Oil Site Disbursement Special Account and Agreement to Disburse Funds to Settling Work Defendants. Within 30 days after entry of this Consent Decree, EPA shall establish a new special account, the Lenz Oil Site Disbursement Special Account, within the EPA Hazardous Substance Superfund and shall transfer \$3,100,000 from the Lenz Oil Special Account to the Lenz Oil Site Disbursement Special Account. In addition, if EPA determines, and notifies the Settling Work Defendants, that they are to implement ROD contingent remedy 11, (following EPA approval of the Settling Work Defendants' phase I final PDDC Investigations Report as provided by this Consent Decree), then, within 30 days after such EPA notice, EPA shall transfer an additional \$100,000 for ROD contingent remedy 11, from the Lenz Oil Site Special Account to the Lenz Oil Site Disbursement Special Account. In addition, if EPA determines, and notifies the Settling Work Defendants, that they are to implement ROD remedy alternative 9A (following EPA approval of the Settling Work

Defendants' phase I final PDDC Investigations Report as provided by this Consent Decree), then, within 30 days after such EPA notice, EPA shall transfer all remaining funds including Interest Earned, from the Lenz Oil Site Special Account to the Lenz Oil Site Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Lenz Oil Site Disbursement Special Account, including Interest Earned on the funds in the Lenz Oil Site Disbursement Special Account, available for disbursement to Settling Work Defendants as partial reimbursement for performance of the Work under this Consent Decree. EPA shall disburse funds from the Lenz Oil Site Disbursement Special Account to Settling Work Defendants in accordance with the procedures and milestones for phased disbursement set forth in this Section.

59. Timing, Amount and Method of Disbursing Funds From the Lenz Oil Site Disbursement Special Account. Within 90 days of EPA's receipt of a Cost Summary and Certification, as defined by Paragraph 60.b. below, or if EPA has requested additional information under Paragraph 60.b. or a revised Cost Summary and Certification under Paragraph 60.c., within 90 days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the Lenz Oil Site Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

Disbursement of Funds from the Lenz Oil Site
Disbursement Special Account:

<u>Milestone</u>	<u>ROD remedy 9A</u>	<u>ROD remedy 10</u>	<u>ROD remedy 11</u>
a. Phase I construction:			
1. EPA approval of the PDDC Report	\$200,000	\$200,000	\$200,000
2. EPA approval of the phase 1 Remedial Design	\$500,000	\$500,000	\$500,000
3. EPA approval of Phase 1 Construction Completion Report	\$2,400,000	\$1,300,000	\$1,400,000
and either b. or c., below, depending on the EPA phase II determination:			
b. Phase II construction:			
1. EPA approval of The phase II Remedial Design	\$250,000	\$250,000	\$250,000
2. EPA approval of the phase II Construction Completion Report	\$500,000	\$500,000	\$500,000
3. EPA issuing the Certification of Completion of the Remedial Action	Remainder	Remainder	Remainder
or			
c. If EPA determines that no phase II construction is required, upon EPA issuing the Certification of Completion of the Remedial Action	Remainder	Remainder less \$500,000	Remainder less \$500,000

Phase II construction shall include but is not limited to the construction, installation and/or operation of groundwater monitoring wells and a groundwater monitoring program.

To the extent that EPA does not disburse funds available for disbursement to the Settling Work Defendants at a particular milestone, such undisbursed funds shall be carried forward and available for disbursement in the subsequent milestone, in addition to the funds designated for disbursement in such subsequent milestones. EPA shall disburse the funds from the Lenz Oil Site Disbursement Special Account to the Settling Work Defendants by payment to the Lenz Oil Site Escrow Account. The Settling Work Defendants will notify EPA of the payment address or instructions for electronic funds transfer if the Lenz Oil Escrow Agreement does not provide this information.

60. Requests for Disbursement of Special Account Funds

a. Within 30 days of issuance of EPA's written confirmation that a milestone of the Work, as defined in Paragraph 59 of this Section, has been satisfactorily completed, Settling Work Defendants shall submit to EPA a Cost Summary and Certification, as defined in Subparagraph 60.b. below, covering the Work performed pursuant to this Consent Decree up to the date of completion of that milestone. Settling Work Defendants shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously reimbursed pursuant to Paragraph 59.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Settling Work Defendants for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 61 of this Section. Each

Cost Summary and Certification shall contain the following statement signed by the Chief Financial Officer of a Settling Work Defendant, or by an Independent Certified Public Accountant, or by a specified independent person previously approved by EPA after a request for such approval from the Settling Work Defendants:

"To the best of my knowledge, after thorough investigation and review of Settling Defendants' documentation of costs incurred and paid for Work performed pursuant to this Consent Decree [insert, as appropriate, "up to the date of completion of milestone a.1," "between the date of completion of milestone a.1 and the date of completion of milestone a.2," "between the date of completion of milestone a.2 and the date of completion of the milestone b.1. or c," "between the date of completion of milestone b.1 and the date of completion of the milestone b.2.," "between the date of completion of milestone b.2 and the date of completion of the milestone b.3"] I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

The Chief Financial Officer of a Settling Work Defendant, or Independent Certified Public Accountant, or other specified independent person accepted by EPA shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Settling Work Defendants shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. If EPA finds that a Cost Summary and Certification includes a mathematical accounting error, costs excluded under Paragraph 61 of this Section, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification previously reimbursed pursuant to Paragraph 59 of this Section, it

will notify Settling Work Defendants and provide an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Settling Work Defendants fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Settling Work Defendants' costs eligible for disbursement for that submission and disburse the corrected amount to Settling Work Defendants in accordance with the procedures in Paragraph 59 of this Section. Settling Work Defendants may dispute EPA's recalculation under this Paragraph pursuant to the dispute resolution provisions of this Consent Decree. In no event shall Settling Work Defendants be disbursed funds from the Lenz Oil Site Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

61. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by Settling Work Defendants for, disbursement from the Lenz Oil Site Disbursement Special Account: (1) response costs paid pursuant to Section XVI (Reimbursement of Response Costs) of this Consent Decree; (2) response costs paid from funds (A) paid pursuant to Paragraph 65.b. of this Consent Decree by the State to the Settling Work Defendants and (B) paid pursuant to Paragraph 53.a. of this Consent Decree by the Settling Cash Defendants to the Lenz Oil Site Escrow Account in the amounts set forth in Appendix D.2; (3) any other payments made by Settling Work Defendants to the United States pursuant to this Consent Decree, including, but not limited to, any interest or stipulated penalties paid pursuant to

Sections XVI or XXII of this Consent Decree; (4) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to obtaining access or institutional controls as required by Paragraphs 25, 26, 27 and 28 of this Consent Decree; (5) costs of any response activities Settling Work Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (6) costs related to Settling Work Defendants' litigation, settlement, development of potential contribution claims or identification of defendants; (7) internal costs of Settling Work Defendants, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Settling Work Defendants directly performing the Work; (8) any costs incurred by Settling Work Defendants prior to the Effective Date of this Consent Decree except for approved Work performed after lodging, but prior to entry of this Consent Decree; or (9) any costs incurred by Settling Work Defendants in pursuing the dispute resolution provisions of Section XXI of this Consent Decree. The following funds if used by Settling Work Defendants to pay costs for Work performed pursuant to this Consent Decree are not excluded by this Paragraph: (i) funds paid pursuant to Paragraph 53.b. as set forth on Appendix D.4., by the State Settling Defendants to the Settling Work Defendants that is for and attributable to settlement of the State Settling Defendants' liability to the State for reimbursement of past costs and (ii) funds paid pursuant to Paragraph 53.c. as set forth on Appendix D.6., by the RI/FS Settling Defendants to the Settling Work Defendants that is for and attributable to settlement of the RI/FS Settling Defendants'

liability for past costs. Unless otherwise excluded in this Paragraph, costs for Work performed pursuant to this Consent Decree may be submitted to EPA for disbursement.

62. Termination of Disbursements from the Special Account.

EPA's obligation to disburse funds from the Lenz Oil Site Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Settling Work Defendants: (1) have knowingly submitted a materially false or misleading Cost Summary and Certification; (2) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 30 days after being notified of, and given the opportunity to cure, the deficiency; or (3) failed to submit a Cost Summary and Certification as required by Paragraph 60 of this Section within 30 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Settling Work Defendants' failure to submit the Cost Summary and Certification as required by Paragraph 60. EPA's obligation to disburse funds from the Lenz Oil Site Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 95 of this Consent Decree, when such assumption of performance of the Work is not challenged by Settling Work Defendants or, if challenged, is upheld under the dispute resolution provisions of Section XXI of this Consent Decree. Settling Work Defendants may dispute EPA's termination of special account disbursements under the dispute

resolution provisions of Section XXI of this Consent Decree.

63. Recapture of Special Account Disbursements. Upon termination of disbursements from the Lenz Oil Site Disbursement Special Account under Paragraph 62 of this Section, if EPA has previously disbursed funds from the Lenz Oil Site Disbursement Special Account for activities specifically related to the reason for termination (e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission), EPA shall submit a bill to Settling Work Defendants for those amounts already disbursed from the Lenz Oil Site Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Work Defendants. Within 30 days of receipt of EPA's bill, Settling Work Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, EPA Site/Spill Identification Number 05BN, and DOJ Case Number 90-11-3-1540. Settling Work Defendants shall send the check(s) to:

U.S. EPA Region 5
ATTN: Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673-0753

At the time of payment, Settling Work Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XXX (Notices and Submissions) and to the Director, Superfund Division (S-6J), U.S. EPA, Region 5, and the Comptroller Branch Chief (S-PMD),

Superfund Division, U.S. EPA, Region 5, both located at 77 West Jackson Blvd., Chicago, Illinois 60604. Upon receipt of payment, EPA may deposit all or any portion thereof in the Lenz Oil Site Special Account, the Lenz Oil Site Disbursement Special Account, or the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Settling Work Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Settling Work Defendants may dispute EPA's determination as to recapture of funds pursuant to the dispute resolution provisions of Section XXI of this Consent Decree.

64. Balance of Special Account Funds. After EPA issues its written Certification of Completion of the Remedial Action pursuant to this Consent Decree, and after EPA completes all disbursement(s) to Settling Work Defendants in accordance with this Section, if any funds remain in the Lenz Oil Site Disbursement Special Account, EPA may transfer such funds to the Lenz Oil Site Special Account or to the Hazardous Substance Superfund. Any such transfer of funds to the Lenz Oil Site Special Account or the Hazardous Substance Superfund shall not be subject to challenge by Settling Work Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

**XVIII. DISBURSEMENT OF FUNDS FROM THE LENZ OIL SEGREGATED ACCOUNT
AND OTHER OBLIGATIONS OF THE STATE**

65. a. The State shall pay money to the Settling Work Defendants in the manner set forth in Paragraph 65.b. hereof, to reimburse the Settling Work Defendants for a portion of the costs they incur in performing the Work.

b. The State shall transfer funds from the Lenz Oil Segregated Account to the Lenz Oil Site Escrow Account according to the following schedule:

(1) the sum of \$ 1,085,303.01 within 45 days of entry of the Consent Decree;

(2) the balance of the Lenz Oil Segregated Account annually thereafter; such obligation will continue until the balance in the Lenz Oil Segregated Account reaches zero; provided, however, that if, after such balance reaches zero, the State obtains additional funds pursuant to Paragraph 65.d. of this Consent Decree, the State shall transfer such funds within 45 days of receipt thereof to the Lenz Oil Site Escrow Account. Upon collection and payment of all funds from the First De Minimis AOC (as amended or supplemented), the State shall retain its authority and discretion to close the account. Such action shall not be deemed a violation of this Consent Decree.

c. Settling Work Defendants shall provide the State with a quarterly accounting describing how funds paid by the State to Settling Work Defendants were used to pay for the costs of performing the Work. Such accounting shall include a description of the work performed, the amount of expenditure, the date paid, the recipient of the funds, and the balance of funds remaining and shall attach copies of the invoices representing the costs which have been paid. Settling Work Defendants shall be obligated to provide the State with such accounting even if no State funds were expended in the quarter. The obligation to provide an accounting shall cease entirely following any quarter in which the Lenz Oil Site Escrow Account balance is zero,

subject to further accounting as provided in this Paragraph 65.c. if additional funds are transferred in accordance with the last clause of Paragraph 65.b.(2) of this Consent Decree to the Lenz Oil Site Escrow Account or to such other account as may be designated by the Settling Work Defendants, as the case may be.

d. The State anticipates that it may conclude or enter into settlements with persons or entities who were or are eligible to participate in the First De Minimis AOC, either through an amendment to the First De Minimis AOC (expected to collect \$48,462.09) or through the subsequent Second De Minimis AOC (expected to collect \$6,787.05). To the extent the State receives any proceeds on account of such amendment to the First De Minimis AOC, the State shall deposit all such proceeds into the Lenz Oil Segregated Account which will be paid out in accordance with the provisions of Paragraph 65.b.

e. In addition to any recoveries obtained pursuant to Paragraph 65.d. hereof, the State agrees to use "reasonable efforts" to pursue and obtain recoveries from potentially responsible persons or entities who have not resolved or refuse to resolve their liabilities for State Past Response Costs at the Site. Such "reasonable efforts" shall be subject to the Attorney General's prosecutorial discretion and may include negotiations and/or the initiation of proceedings (including, without limitation, de minimis settlements (other than those specified in Paragraph 65.d.) against such persons or entities to recover unreimbursed State Past Response Costs and State Future Response Costs. The Attorney General further agrees to provide notice of material events related to such

"reasonable efforts," to the Settling Work Defendants in a timely manner in order to allow Settling Work Defendants to take such action as they may deem appropriate. The Settling Work Defendants shall receive forty percent (40%) of the cash value paid by such persons or entities who are not Settling Defendants, to resolve such negotiations and/or proceedings with respect to State Past Response Costs and/or State Future Response Costs, whether by way of settlement, compromise or judgment ("Future Recoveries"). The Settling Work Defendants shall designate a sub-account of the Lenz Oil Site Escrow Account into which all Future Recoveries shall be paid. The State shall bear its State Future Litigation Costs in pursuing such negotiations and/or proceedings and shall not seek reimbursement, directly or indirectly, for any State Future Litigation Costs from the Settling Defendants. Notwithstanding the foregoing, nothing in this Paragraph 65.e. shall be deemed to limit or affect the right of the State to exercise prosecutorial discretion in determining whether to negotiate or initiate any cost recovery action, the persons or entities from whom reimbursement should be sought, or the decision to settle, resolve or cease pursuing any such persons or entities. The Settling Work Defendants shall not be deemed to be clients of, co-plaintiffs or joint venturers with, or to be in any other legal relationship with the State (other than pursuant to the terms of this Consent Decree). Nothing in this Paragraph 65.e. shall be deemed to compromise any right on the part of the Settling Defendants to pursue any potentially responsible persons or entities for contribution claims relating to the Work or the Site under any applicable statutory or common law.

66. In connection with this Consent Decree, the State (but only the Attorney General and the Illinois EPA), at their own cost and expense, to the extent possible, shall assist the Settling Work Defendants in dealing with all agencies and instrumentalities of the State and all municipalities and local governmental units (collectively, the "State/Local Agencies"). The Settling Work Defendants shall attempt, in the first instance, to resolve their dealings with State/Local Agencies (other than the Illinois EPA) without resort to assistance from the State hereunder. If, in good faith, the Settling Work Defendants determine that assistance is needed, the Settling Work Defendants shall make a written request to the State describing, for reference, the assistance needed and the applicable section(s) of this Consent Decree. Such requests shall be sent as follows: to Maria Menotti, Assistant Attorney General, and Peter Orlinsky, Assistant Counsel to the Illinois EPA, or their respective successors.

XIX. INDEMNIFICATION AND INSURANCE

67. a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Work Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Work Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Work Defendants, their

officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Work Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Work Defendants agree to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Settling Work Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Work Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Work Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Settling Work Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 67, and shall consult with Settling Work Defendants prior to settling such claim.

68. Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of

any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays (it being understood that the foregoing does not limit any rights of Settling Work Defendants pursuant to Section XVII (Disbursement of Funds From the EPA Special Account Funds) of this Consent Decree). In addition, Settling Work Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Work Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

69. No later than 15 days before commencing any on-site Work, Settling Work Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 49.c. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of \$10 million dollars, combined single limit, and automobile liability insurance with limits of \$2 million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Settling Work Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding

the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Work Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Work Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Work Defendants shall resubmit such certificates each year on the anniversary of the effective date of this Consent Decree. Upon EPA request Settling Work Defendants shall submit copies of each insurance policy. If Settling Work Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Settling Work Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XX. FORCE MAJEURE

70. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Work Defendants, of any entity controlled by Settling Work Defendants, or of Settling Work Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Work Defendants' best efforts to fulfill the obligation. The requirement that the Settling Work Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event

(1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

71. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Work Defendants shall orally notify EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 24 hours of when Settling Work Defendants first knew that the event might cause a delay. Within seven days thereafter, Settling Work Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Work Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Work Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Work Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Work Defendants from

asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Work Defendants shall be deemed to know of any circumstance of which Settling Work Defendants, any entity controlled by Settling Work Defendants, or Settling Work Defendants' contractors knew or should have known.

72. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Work Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Work Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

73. If the Settling Work Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution),

they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Work Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Work Defendants complied with the requirements of Paragraphs 69 and 70, above. If Settling Work Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Work Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XXI. DISPUTE RESOLUTION

74. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section. The EPA's proposal, selection, or failure to propose or select an alternate remedy or a contingent remedy for this Site, or EPA's response to the Settling Work Defendant's proposal, if any, to select an alternate remedy or contingent remedy for this Site, is not a matter subject to the dispute resolution procedures of this Section.

75. Any dispute which arises under or with respect to this

Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

76. a. In the event that the parties cannot resolve a dispute by informal negotiations specified in Paragraph 75 above, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Work Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Work Defendants. The Statement of Position shall specify the Settling Work Defendants' position as to whether formal dispute resolution should proceed under Paragraphs 77 or 78.

b. Within 20 days after receipt of Settling Work Defendants' Statement of Position, EPA will serve on Settling Work Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraphs 77 or 78. Within 20 days

after receipt of EPA's Statement of Position, Settling Work Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Work Defendants as to whether dispute resolution should proceed under Paragraphs 77 or 78, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Work Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 77 and 78.

77. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Work Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this

Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 77.a. This decision shall be binding upon the Settling Work Defendants, subject only to the right to seek judicial review pursuant to Paragraph 77.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 77.b. shall be review able by this Court, provided that a motion for judicial review of the decision is filed by the Settling Work Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Work Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Work Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 77.a.

78. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise

accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Work Defendants' Statement of Position submitted pursuant to Paragraph 76, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Work Defendants unless, within 10 days of receipt of the decision, the Settling Work Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Work Defendants' motion.

b. Notwithstanding Paragraph O of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

79. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Work Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 87. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree.

In the event that the Settling Work Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties), unless EPA agrees in writing or the Court rules otherwise.

XXII. STIPULATED PENALTIES

80. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 81.a. and 82 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). "Compliance" by Settling Work Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

81. a. The following stipulated penalties shall accrue and shall be payable by the Settling Work Defendants per violation per day for any noncompliance identified below:

VIOLATION PENALTY PER DAY, Periods of Noncompliance

	1 st through 15 th day	16 th through 45 th day	46 th and beyond
Failure to submit any progress report required by Section X in a timely manner and adequate form:	\$500	\$1,000	\$2,000
Failure to submit any other report (in draft or final) required by the SOW in a timely manner and form adequately addressing the report subject:	\$500	\$1,000	\$2,500

Failure to submit any plans (in draft or final) in a timely manner and in a form adequately addressing the plan subject:	\$500	\$1,500	\$4,000
Failure to complete the following components of the remedy as scheduled: Award contract(s) for PDDC, RD or RA:	\$500	\$1,500	\$3,000
Initiate any phase of Work (e.g., initiate an identified study or a construction phase):	\$500	\$1,000	\$2,000
Complete any phase of Work:	\$500	\$1,500	\$3,000
Failure to initiate or maintain operating any remedy component (e.g. extraction and treatment):	\$500	\$1,500	\$3,000
Failure to conduct any inspection, meeting or briefing required by the SOW:	\$500	\$750	\$2,000
Failure to comply with requirements for:			
Notice of a release:	\$1,500	\$3,000	\$5,000
Notice of a delay:	\$750	\$1,500	\$3,000
Failure to take action to abate and endangerment under Section XV:	\$1,500	\$2,500	\$5,000

b. A stipulated penalty of \$1,000 per day per violation shall accrue and shall be payable to the United States by any Settling Defendant for its failure to make timely payment of the amount payable by such Settling Defendant under Section XVI (Reimbursement of Response Costs) of this Consent Decree, in addition to any Interest on such amounts and such other remedies or sanctions available to the Parties.

82. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 95 of Section XXIII (Covenants Not to Sue by the United States), Settling Work Defendants shall be liable for a stipulated penalty of \$350,000.

83. All penalties shall begin to accrue on the day after the

complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Work Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 77.b. or 78.a. of Section XXI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Work Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XXI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

84. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether

EPA has notified the Settling Defendants of a violation.

85. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XXI (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. EPA, Region 5
ATTN: Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673-0753

and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 05BN, the DOJ Case Number 90-11-3-1540, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXX (Notices and Submissions), and to the Director, Superfund Division (S-6J), U.S. EPA, Region 5, and the Comptroller Branch Chief (5-PMD), Superfund Division, U.S. EPA, Region 5, both located at 77 West Jackson Blvd., Chicago, Illinois 60604.

86. The payment of penalties shall not alter in any way Settling Work Defendants' obligation to complete the performance of the Work required under this Consent Decree.

87. Penalties shall continue to accrue as provided in Paragraph 83 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

88. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 85.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by

virtue of Settling Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

89. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXIII. COVENANTS NOT TO SUE BY THE UNITED STATES

90. a. Settling Work Defendants. In consideration of the actions that will be performed and the payments that will be made by the Settling Work Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 91, 92 and 94.a. of this Section, the United States covenants not to sue, and EPA covenants not to take administrative action against, the Settling Work Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of the Resource Conservation and Recovery Act ("RCRA") relating to the Site, or the RI/FS AOC, or for the recovery of Past Response Costs or Future Oversight Costs, or for liability, if any, which results solely from any entity(ies) acquiring, holding, or enforcing an interest in the Site pursuant to Section IX., "Access and Institutional Controls", of this Consent Decree; provided, however, that the covenant relating to the "Access and Institutional Controls"

shall not preclude the United States from enforcing the obligations under such provisions. Except with respect to future liability, these covenants not to sue shall take effect upon the entry of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.c. of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Work Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Work Defendants and do not extend to any other person.

b. Settling Cash Defendants. In consideration of the payments that will be made by the Settling Cash Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 91, 92 and 94.b. of this Section, the United States covenants not to sue, and EPA covenants not to take administrative action against, the Settling Cash Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site, or the RI/FS AOC, or for the recovery of Past Response Costs. Except with respect to future liability, these covenants not to sue shall take effect upon entry of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.c. of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon satisfactory performance by Settling Cash Defendants of their obligations under this Consent

Decree. These covenants not to sue extend only to the Settling Cash Defendants and do not extend to any other person.

91. United States' Pre-certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

92. United States' Post-certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

93. For purposes of Paragraph 91 the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 92, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

94. a. General Reservations of Rights as to Settling Work Defendants. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 90a. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Work Defendants with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Work Defendants to meet a requirement of this Consent Decree;
- (2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- (3) liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;
- (4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (5) criminal liability;
- (6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- (7) liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans); and

(8) liability, after Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve the Performance Standards, including Standards for the extraction and treatment system, whether or not such response actions can be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans) or any other provision of this Consent Decree.

b. General Reservation of Rights as to Settling Cash Defendants. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 90.b. (with respect to Settling Cash Defendants). The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Cash Defendants with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure to meet one of their respective obligations under this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability of any Settling Cash Defendant for its future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;

(4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(5) criminal liability.

95. Work Takeover. In the event EPA determines that Settling Work Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Work Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution), Paragraph 77, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States, or the State pursuant to Section 104(c)(3)(C)(i) of CERCLA, 42 U.S.C. §9604(c)(3)(C)(i), in performing the Work pursuant to this Paragraph shall be considered Future Response Costs or State Future Response Costs, as the case may be, that Settling Work Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

96. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. COVENANTS NOT TO SUE AND RELEASES BY THE STATE

97. a. Subject to the reservations in Paragraph 97.e., in consideration of the covenants made and the actions that will be performed by the Settling Defendants and the payments that will be made by the Settling State Defendants under the terms of the Consent Decree, the State covenants not to sue, and hereby releases, the Settling Defendants from any claim or cause of action, in law or in equity, including fines or penalties, relating to the Site pursuant to

Sections 106 and 107(a) of CERCLA, Sections 7002 and 7003 of RCRA, Section 22.2(f) of the Illinois Environmental Protection Act, 415 ILCS 5/22.2(f) (2000), or under any other statutory or common law power of the State Attorney General or of the Illinois EPA, including, but not limited to, the following:

- (1) the performance of the Work;
- (2) State Past Response Costs;
- (3) State Future Response Costs, except as specifically provided in Paragraph 55;
- (4) State Future Litigation Costs; and
- (5) for liability, if any, which results solely from any entity(ies) acquiring, holding, or enforcing an interest in the Site pursuant to Section IX., "Access and Institutional Controls", of this Consent Decree; provided, however, that the covenant relating to the "Access and Institutional Controls" shall not preclude the State from enforcing the obligations under such provisions.

(6) the performance of any response actions required to be performed pursuant to Paragraphs 91 and 92 (in each case, other than costs incurred by the State pursuant to Section 104(c)(3)(C)(i) of CERCLA), 94.a. (other than clause (4) thereof) and 94.b. (other than clause (4) thereof) of this Consent Decree.

b. The covenants not to sue and releases provided in Paragraph 97.a. shall take effect as follows:

- (1) Except as provided in Paragraph 97.b.(2) or (3), upon entry of the Consent Decree;

(2) For State Past Response Costs: as to Past State Settling Defendants, upon entry of the Consent Decree; as to each Settling State Defendant, upon entry of the Consent Decree and the payment of each such Settling State Defendant's payment obligation as set forth in Paragraph 53.b.; and

(3) For State Future Response Costs: as to Settling Defendants, upon entry of the Consent Decree and payment of up to \$150,000 in State Future Response Costs as provided in Paragraph 55.

c. The covenants not to sue and releases extend only to the Settling Defendants and to each of their predecessors, successors and assigns, and not to any other person.

d. Except as provided in paragraph 55, the State covenants not to seek, collect or recover, directly or indirectly, from Settling Defendants any State Past Response Costs or State Future Response Costs which the State has incurred, may incur or will incur, for example, by submitting any reimbursement request to EPA for State Past Response Costs or State Future Response Costs for which EPA may seek reimbursement from the Settling Defendants and for which the Settling Defendants are released pursuant to the covenants not to sue and releases set forth in Paragraph 97.a. of this Consent Decree.

e. The covenants not to sue and releases set forth in Paragraph 97.a. do not pertain to any matters other than those specified. The State reserves, and the Consent Decree is without prejudice to, all of the State's rights which may exist against all Settling Defendants with respect to all other matters, including, but not limited to, the following:

(1) claims based on a failure by Settling Defendants to meet their obligations to the State under this Consent Decree;

(2) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(3) criminal liability; and

(4) claims based on conduct in violation of State law occurring in connection with and during performance of the Work.

f. Except as provided in this Consent Decree with respect to the Settling Defendants and each of their predecessors, successors and assigns, the State expressly reserves the right to sue or continue to sue any person or entity in connection with the contamination at or from the Site.

g. Except with respect to the State's obligations under this Consent Decree, nothing herein shall be deemed a waiver of any right, power or defense available to the State relative to any proceeding, action or claim against it. Nothing limits the right of the State to defend any action brought against it.

XXV. COVENANTS BY SETTLING DEFENDANTS TO THE UNITED STATES

98. Covenant Not to Sue. Subject to the reservations in Paragraph 99, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the

Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law (it being understood that claims for disbursements under Section XVII (Disbursement of Funds from the EPA Special Account Funds) are not affected by this subparagraph);

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site,

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

d. any direct or indirect claim for disbursement from the Lenz Oil Site Special Account or Lenz Oil Site Disbursement Special Account (established pursuant to this Consent Decree), except as provided in Section XVII (Disbursement of Funds from the EPA Special Account Funds).

99. The covenants not to sue contained in Paragraph 98 shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs, 92, 94(a)(2)-(8) or 94(b)(2)-(5), but only to the extent that Settling Defendants' claims arise from the same cause of action asserted, or order issued, by the United States pursuant to those paragraphs. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States subject to the provisions of Chapter 171 of Title 28 of the United States Code,

for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

100. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

101. Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against the following persons:

a. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge owned by

such person, and (iii) who is a Small Business, a Small Non-profit Organization, or the Owner, Operator, or Lessee of Residential Property; and

b. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 55 gallons or less of liquid materials containing hazardous substances, or 100 pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site.

c. any person whose liability with respect to the Site has been resolved in the First or Second De Minimis AOC.

102. Nothing in this Consent Decree, including but not limited to Paragraphs 10 and 11 of this Consent Decree, shall be construed to create any rights and/or causes of action in any person, including each Settling Defendant, to challenge EPA's selection of a remedial action or the proposal or failure to propose a remedial action, including but not limited to any Explanation of Significant Difference or ROD amendment.

XXVI. COVENANTS NOT TO SUE AND RELEASES BY SETTLING DEFENDANTS TO THE STATE

103. a. Subject to the reservations in Paragraph 103.e., in consideration of the covenants and the commitments made by the State under the terms of the Consent Decree, Settling Defendants covenant not to sue, and hereby release, the State from any claim or cause of

action, in law or in equity, relating to the Site including, but not limited to, the following:

- (1) the performance of the Work;
- (2) Past Response Costs;
- (3) Future Response Costs;
- (4) reimbursement from any State Fund, except as otherwise provided in Paragraph 65 of Section XVIII; and
- (5) the performance of any response actions required to be performed pursuant to Paragraphs 91 and 92 (in each case, other than costs incurred pursuant to Section 104(c)(3)(C)(i) of CERCLA), 94.a. (other than clause (4) thereof) and 94.b. (other than clause (4) thereof), and 95 of this Consent Decree.

b. Subject to the reservations in Paragraph 103.e., Past State Settling Defendants covenant not to sue, and hereby release, the State from any claim or cause of action, in law or in equity, with respect to any term, provision, covenant or obligation contained within the Four State Partial Consent Decrees relating to the Site, including, but not limited to, any action that may require the State to pay for or to perform any of the Work or any response actions required to be performed pursuant to Paragraphs 91 and 92 (in each case, other than costs incurred pursuant to Section 104(c)(3)(C)(i) of CERCLA), 94.a. (other than clause (4) thereof), and 94.b. (other than clause (4) thereof), and 95 of this Consent Decree.

c. Subject to the reservations in Paragraph 103.e., RI/FS Past Participating Settling Defendants covenant not to sue, and hereby release, the State from any claim or cause of action, in law or in

equity, with respect to any term or provision contained within the RI/FS AOC, relating to the Site, including, but not limited to, any action that may require the State to pay for or to perform any of the Work or any response actions required to be performed pursuant to Paragraphs 91 and 92 (in each case, other than costs incurred pursuant to Section 104(c)(3)(C)(i) of CERCLA), 94.a. (other than clause (4) thereof), and 94.b. (other than clause (4) thereof), and 95 of this Consent Decree.

d. The covenants not to sue and releases provided in Paragraphs 103.a., b. and c. shall take effect upon entry of this Consent Decree.

e. The covenants not to sue and releases set forth in Paragraphs 103.a., b. and c. do not pertain to any matters other than those specified. The Settling Defendants reserve, and nothing in this Consent Decree is intended to prejudice or waive any Settling Defendant's rights against the State, whether arising in law or equity, based on the following:

(1) a failure by the State to meet its obligations under this Consent Decree (subject to the provisions of Section XXI (Dispute Resolution));

(2) any negligent or wrongful acts of, or omissions by, the State or any State employee (it being understood that such reservations apply only to claims pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA); and

(3) liability for damages for injury to, destruction of, or loss of natural resources, and the costs of any natural resource damage assessments.

f. Nothing herein shall be deemed a waiver of any defense available to the Past State Settling Defendants arising out of the Four State Partial Consent Decrees. Nothing limits the right of the Settling Defendants to defend any action brought against them.

g. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. §300.700(d).

XXVII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

104. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

105. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. For

purposes of this Section XXVII (Effect of Settlement; Contribution Protection), the "matters addressed" in this settlement are all response actions taken and to be taken, including without limitation, acquiring, holding, or enforcing an interest in the Site pursuant to Section IX., "Access and Institutional Controls", of this Consent Decree, and all response costs incurred or to be incurred by the United States (including Past Response Costs and Future Response Costs), the State (including State Past Response Costs and State Future Response Costs) or by any other person with respect to the Site. The "matters addressed" in this settlement do not include those response actions or response costs to which the United States and the State have reserved their rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States or the State asserts rights against Settling Defendants coming within the scope of such reservations.

106. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

107. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within 10 days of service of the complaint on them. In addition, in any such contribution action, Settling Defendants shall notify the United States and the State within 10 days

of service or receipt of any Motion for Summary Judgment, final judgment or final resolution of an action and within 10 days of receipt of any order from a court setting a case for trial.

108. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIII (Covenants Not to Sue by the United States) and Section XXIV (Covenants Not to Sue and Releases by the State).

XXVIII. ACCESS TO INFORMATION

109. Settling Work Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Work Defendants shall also make available to EPA and the State, for purposes of investigation,

information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

110. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the

privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

111. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXIX. RETENTION OF RECORDS

112. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary, except to the extent that copies of documents have been obtained from EPA through a Freedom of Information Act request. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.b of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

113. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

114. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any

and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXX. NOTICES AND SUBMISSIONS

115. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

William E. Muno, Director
Superfund Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

and:

Scott Hansen
EPA Project Coordinator
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

As to the State:

Maria M. Menotti
Assistant Attorney General
Environment Bureau

Illinois Attorney General's Office
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

Jerry Willman
State Project Coordinator
1021 North Grand Avenue East
PO Box 19276
Springfield, Illinois 62794-9276

As to the Settling Defendants:

Alan Bielawski, Esq.
Sidley and Austin
Bank One Plaza
10 S. Dearborn Street
Chicago, Illinois 60603

XXXI. EFFECTIVE DATE

116. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXXII. RETENTION OF JURISDICTION

117. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXI (Dispute Resolution) hereof.

XXXIII. APPENDICES

118. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the complete list of the Settling Defendants.

"Appendix E" is the Lenz Oil Escrow Agreement.

XXXIV. COMMUNITY RELATIONS

119. Settling Work Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Work Defendants under the Plan. Settling Work Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Settling Work Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

XXXV. MODIFICATION

120. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Work Defendants. All such modifications shall be made in writing.

121. Except as provided in Paragraph 13 (Modification of the SOW or related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United

States, Settling Work Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Work Defendants.

122. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

123. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

124. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation.

XXXVII. SIGNATORIES/SERVICE

125. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, the Assistant Attorney General for the State of Illinois and the Chief Legal Counsel for Illinois EPA certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

126. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

127. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXVIII. FINAL JUDGMENT

128. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and

among the United States, the State, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

SO ORDERED THIS ____ DAY OF _____, 2002.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction, et al., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR THE UNITED STATES OF AMERICA

2.4.02

Date

Tom Sansonetti

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Div.
U.S. Department of Justice
Washington, D.C. 20044

5-17-02

Date

Mary Reed

MARY REED
Environment Enforcement Section
Environment and Natural Resources Div.
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

PATRICK FITZGERALD
United States Attorney

Date

LINDA WAWZENSKI
Assistant United States Attorney
Northern District of Illinois
219 So. Dearborn Street Suite 1200
Chicago, Illinois 60604
(312) 353-1994

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction, relating to the Lenz Oil Services, Inc., Superfund Site.

**FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

April 3, 01

Date

for [Signature]

David A. Ullrich
Acting Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

April 3, 2001

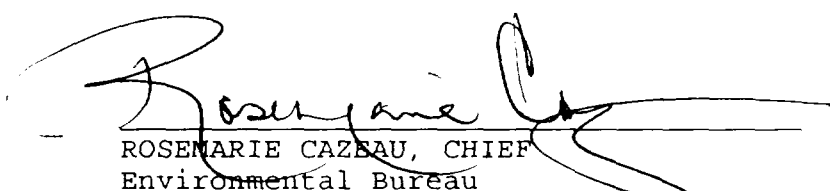
Date

[Signature]

Stuart P. Hersh
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

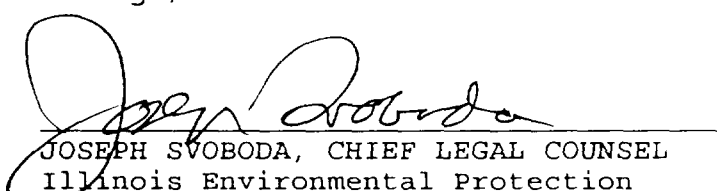
4/9/01
Date

FOR THE STATE OF ILLINOIS



ROSEMARIE CAZEAU, CHIEF
Environmental Bureau
Assistant Attorney General
Illinois Attorney General's Office
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

4/6/01
Date



JOSEPH SVOBODA, CHIEF LEGAL COUNSEL
Illinois Environmental Protection
Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Cardox Corporation merged*, relating to the Lenz Oil Services, Inc., Superfund Site.

Cardox Corporation merged*
FOR _____ COMPANY, INC.* /

*into Liquid Air, Inc., changed name to
LAI Holdings, Inc., changed name to LAI
Properties, Inc., now known as Air Liquide
America Corporation

2-27-01
Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.*/

FOR ALPHA CONSTRUCTION COMPANY

Date

Signature: Al J. Farrell
Name (print): Al J. Farrell
Title: Attorney
Address: 10 South Cass Street
Suite 3500
Chicago, IL 60603

Agent Authorized to Accept Service on Behalf of Above-signed Party:

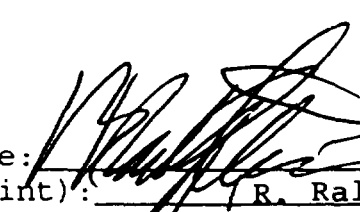
Name (print): Al J. Farrell
Title: Attorney
Address: 10 South Cass Street
Suite 3500
Chicago, IL 60603
Ph. Number: (312) 606-0655

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

ARTIM TRANSPORTATION

FOR _____ COMPANY, INC.* /

2-22-01
Date

Signature: 
Name (print): R. Ralph Artim
Title: President and Sole Shareholder
Address: 7108 Alabama Avenue
Hammond, Indiana 46323

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Scott R. Bilse
Title: Attorney
Address: 200 Russell Street
Suite 200
Hammond, Indiana 46320

Ph. Number: (219) 937-1500

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. ALPHA CONSTRUCTION, ET AL, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Toyota West ~~COMPANY~~ INC.* /

2/20/01
Date

Signature: Kathryn A. Basil
Name (print): KATHRYN A. BASIL
Title: _____
Address: 1196 Willoughate
St Charles, MO
60174

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): JOSEPH R. PODLEWSKI, JR.
Title: ATTORNEY FOR TOYOTA WEST, INC.
Address: S.E. MONROE ST., 46TH FLOOR
CHICAGO, ILLINOIS 60603
Ph. Number: (312) 899-5591

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.* /

BFI Waste Systems of North America, Inc.

and

BFI Waste Systems of North America, Inc., as successor-in-interest by merger to E & E Hauling, Inc.

Date

Signature: _____

Name (print): Jo Lynn White

Title: Corporate Secretary

Address: 15880 N. Greenway-Hayden Loop
Suite 100
Scottsdale, Arizona 85260

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Michael D. Hockley

Title: Attorney

Address: Spencer Fane Britt & Browne
LLP

1000 Walnut, Suite 1400
Kansas City, Missouri 64106

Tel.: 816/292-8233

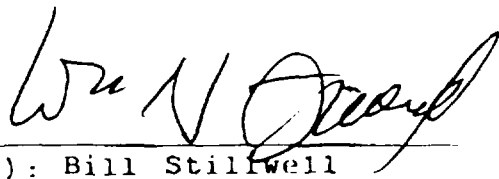
with copy to:

BFI Waste Systems of North America, Inc.
c/o Corporate Secretary
15880 N. Greenway-Hayden Loop, Suite 100
Scottsdale, Arizona 85260

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bill Stillwell Buick, Inc., relating to the Lenz Oil Services, Inc., Superfund Site.

BILL STILLWELL BUICK, INC.

February 23, 2001
Date


Signature: 
Name (print): Bill Stillwell
Title: President
Address: 1866 Ogden Avenue
Downers Grove, Ill. 60515

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Birkey's Farm Store, Inc., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Birkey's Farm ~~XXXXXXXX~~, INC.*/
Store ~~XXXXXXXX~~

2-23-01

Date

Signature: 
Name (print): Ronald Birkey
Title: President
Address: 1120 Veterans Parkway
Post Office Box 907 900
Rantoul, IL 61866
217/892-8255

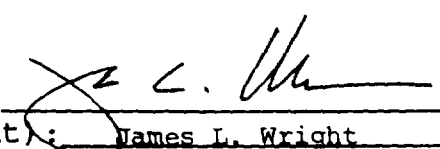
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Ron Birkey
Title: President
Address: 1120 Veterans Highway
Post Office Box 907 900
Rantoul, IL 61866
Ph. Number: 217/892-8255

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR BONCOSKY TRANSPORTATION
COMPANY, INC.* /

February 23, 2001
Date

Signature: 
Name (print): James L. Wright
Title: Its Attorney
Address: 1301 Industrial Drive
Lake In The Hills, IL 60102


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): James L. Wright
Title: Attorney at Law
Address: 40 Brink Street
Crystal Lake, IL 60014
Ph. Number: 815-459-8800

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

SEYLLER TRANSPORT, INC.
FOR _____ ~~COMPANY, INC.~~

Date

Signature: 
Name (print): Robert C. Boncosky
Title: _____
Address: 1301 Industrial Drive
Lake In The Hills, IL 60102

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): James L. Wright
Title: Attorney at Law
Address: 40 Brink Street
Crystal Lake, IL 60014

Ph. Number: 815-459-8800

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BOB G. PONTIAC, relating to the Lenz Oil Services, Inc., Superfund Site.

OPERATED AS ONE ENTITY BOB G. PONTIAC, INC.
BOB G. PONTIAC GMC TRUCK, INC.
BOB G. NISSAN, INC.
 FROM 1962 - 1995 JB

FOR COMPANY, INC.*1
DTB/A BOB G. NISSAN

Date _____

Signature: [Signature]
 Name (print): TEROLO H. BOB G.
 Title: PRESIDENT
 Home Address: 1480 CASS CREEK CT
NAPERVILLE, IL 60563
AND 222 WILDWOOD LANE
NAPLES, FLORIDA 34105
 BUS. OFFICE 5007 LINCOLN
LISLE, ILLINOIS 60532

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): DAVID A. BOB G.
 Title: TREAS.
 Address: 5007 LINCOLN
LISLE, ILLINOIS 60532
 Ph. Number: 630 852-3823
941 649-8897

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BOWER MOTORS, INC., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR BOWER MOTORS COMPANY, INC.* /

MARCH 28, 2001
Date

Signature: William A. Bower Jr.
Name (print): WILLIAM A. BOWER JR.
Title: AGENT FOR BOWER MOTORS INC.
Address: 77 TOMLIN CIRCLE
BURR RIDGE, IL 60521


Agent Authorized to Accept Service on Behalf of Above-signed Party:

DOUGLAS CONOVER
Name (print): RIECK AND CROTTY P.C.
Title: ATTORNEY
Address: 55 WEST MONROE ST. SUITE 3398
CHICAGO, IL 60603
Ph. Number: (312) 726-4646

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR BUTLER AVIATION INTERNATIONAL, INC.

3/22/01
Date

Signature: 
Name (print): Joseph I. Goldstein
Title: Secretary/General Counsel
Address: c/o Signature Flight Support Corp.
201 South Orange Avenue
Suite 1100
Orlando, Florida 32801

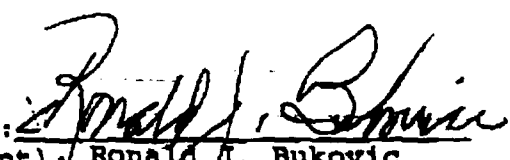
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Robert M. Baratta, Jr.
Title: Attorney/Freeborn & Peters
Address: 311 S. Wacker Drive
Suite 3000
Chicago, IL 60606
Ph. Number: (312) 360-6622

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. Alpha Const. et al., relating to
the Lenz Oil Services, Inc., Superfund Site.

FOR Cheesman COMPANY, INC.*/
Chevrolet, Oldsmobile, Buick, Geo, Inc.

March 30, 2001
Date

Signature: 
Name (print): Ronald J. Bukovic
Title: President, Cheesman, Inc.
Address: 116 S. Spaulding St.
Spring Valley, IL 61362

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name (print): Ronald J. Bukovic
Title: President, Cheesman, Inc.
Address: 116 S. Spaulding St.
Spring Valley, IL 61362
Ph. Number: 815/663-2711

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

Commonwealth Edison
FOR _____ COMPANY, INC. ~~*/~~

2/22/01
Date

Signature: Mary F. O'Toole
Name (print): MARY F. O'TOOLE
Title: Director, Environmental Services
Address: CsmEd
130 S. Jefferson 4th Flr
Chicago IL 60661

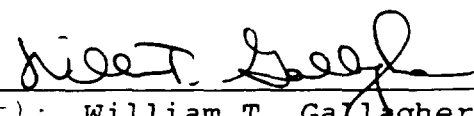
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Alan P. Bielawski
Title: Attorney - Sidley & Austin
Address: Bank One Plaza
10 S Dearborn Street
Chicago, Illinois 60603
Ph. Number: (312) 853-2662

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction, et al. relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Crown Cork & Seal Company, Inc.

February 26, , 2001
Date

Signature: 
Name (print): William T. Gallagher
Title: Vice President
Address: Crown Cork & Seal Company, Inc.
One Crown Way
Philadelphia, PA 19154-4599

Agent Authorized to Accept Service on Behalf of Above-signed
Part~~ies~~

Name (print): Robert P. Harris, Esq.
Title: Attorney
Address: 29 S. LaSalle Street
Suite 740
Chicago, IL 60603
Ph. Number: 312/236-7587

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. DICK JAMES FORD CO., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.* /

Date

Signature: Sherman A. Moore
Name (print): SHERMAN A. MOORE
Title: PARTS + SERVICE DIRECTOR
Address: 1111 E 162ND ST.
SO. HOLLAND IL 60473

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): FRANK NEIDHART JR.
Title: ATTORNEY
Address: 180 N. LA SALLE
SUITE 1400
CHICAGO IL, 60601-2692
Ph. Number: 708-923-7345
OR 312-726-0355

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR DOMBROWSKI & HOLMES, INC.

2/23/01
Date

Signature: [Signature]
Name (print): Gary S. VanRooyen
Title: Vice President
Address: 411 N. Sam Houston Pkwy E.
Suite 400
Houston, TX 77060

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): MICHAEL MILLER
Title: DIRECTOR OF COMPLIANCE
Address: 411 N. SAM HOUSTON PKWY E.
HOUSTON, TX
77060
Ph. Number: 281-272-4548

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Exolon-ESK Company, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Exolon-ESK COMPANY, INC.* /

2/16/01
Date

Signature: Nancy E. Gates
Name (print): Nancy E. Gates
Title: Corporate Secretary
Address: 1000 E. Niagara St.
P.O. Box 590
Tonawanda, NY 14151-0590

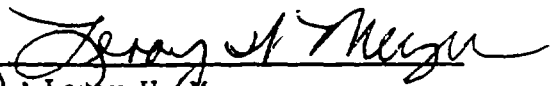
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Lori A. Prokes
Title: (Counsel for Exolon-ESK)
Address: Schiff Hardin & Waite
6600 Sears Tower
Chicago, Illinois 60606
lprokes@schiffhardin.com
Ph. Number: 312-258-5504

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction, et al, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Flexible Steel Lacing COMPANY, ~~XXXXXXXX~~

Feb. 26, 2001
Date

Signature: 
Name (print): Leroy W. Meyer
Title: Treasurer/Secretary
Address: 2525 Wisconsin Ave.
Downers Grove, IL 60515

Agent Authorized to Accept Service on Behalf of Above-signed Party:


Name (print): Leroy W. Meyer
Title: Secretary
Address: 2525 Wisconsin Ave.
Downers Grove, IL 60515

Ph. Number: 630 971-0150

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Harcros Chemicals Inc, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Harcros Chemicals Inc. COMPANY, INC.* /

2/23/01
Date

Signature: 
Name (print): Kevin G. Mirner
Title: President + CEO
Address: 5200 Spawker Rd
Kansas City, KS 66106

Agent Authorized to Accept Service on Behalf of Above-signed Party:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Henry Technologies, Inc., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Henry Technologies COMPANY, INC.*/

3/2/01

Date

Signature: [Signature]
Name (print): GERALD M. FEYNAN
Title: Vice President and CEO
Address: 3215 NORTH AVE
McBrose Park, IL 60660

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Steven C. Filipowski
Title: Attorney
Address: Shaheen, Novoselsky, Staat & Filipowski
20 North Wacker Drive, Suite 2900
Chicago, IL 60606-3192
Ph. Number: 312-621-4400

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

COCA-COLA BOTTLING CO OF CHICAGO
FOR _____ COMPANY, INC.* /

3-8-01
Date

Signature: Michael J. Chmielewski
Name (print): MICHAEL J. CHMIELEWSKI
Title: RISK MANAGER
Address: 7400 N OAK PARK AVE
NILES, IL 60714-3818

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Kevin J. O'Brien
Title: Attorney
Address: Butler Rubin Saltarelli & Boyd
70 West Madison, Suite 1800
Chicago, IL 60602

Ph. Number: (312) 696-4446

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. HOWARD PONTIAC INC., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.* /

Date

Signature: Steven Zazove
Name (print): STEVEN ZAZOVE
Title: PRESIDENT
Address: HOWARD PONTIAC INC
364 W GRAND
ELMHURST IL 60126

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. ALPHA CONSTRUCTION et al., relating to the Lenz Oil Services, Inc., Superfund Site.

FEB. 23, 2001
Date

FOR _____ COMPANY, INC.*/
INTERNATIONAL TRUCK AND ENGINE CORPORATION
NAVISTAR INTERNATIONAL CORPORATION
(FKA NAVISTAR INTERNATIONAL
TRANSPORTATION CORPORATION)
(FKA INTERNATIONAL HARVESTER
COMPANY)

Signature: [Signature]
Name (print): EDITH M. ARDIENTE
Title: VICE PRESIDENT, ENV. AFFAIRS
Address: 455 CITYFRONT PLAZA DR
SUITE 1300
CHICAGO, IL, 60611

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): CT CORPORATION SYSTEM
Title: _____
Address: 1309 ORANGE STREET
WILMINGTON, DE, 19801

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction, relating to the Lenz Oil Services, Inc., Superfund Site.

Jacobs' Twin Bridge, Inc.

FOR _____ COMPANY, INC.*/

3/7/01

Date

Shelli J. Blewett

Signature: Shelli J. Blewett

Name (print): Shelli J. Blewett

Title: Attorney

Address: 721 S. Algonquin Ct.
Suite 1200

Chicago, IL 60604

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Shelli J. Blewett

Title: Attorney

Address: See Above

Ph. Number: 712-760-8782


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.* /

Jefferson Smurfit Corporation (U.S.),
f/k/a Container Corporation of America

February 16, 2001

Date

Signature: 
Name (print): Craig A. Hunt
Title: V.P., General Counsel & Secretary
Address: 150 North Michigan Avenue
Chicago, IL 60601

Agent Authorized to Accept Service on Behalf of Above-signed Party:

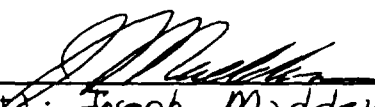
Name (print): CT Corporation
Title: Registered Agent
Address: 208 South LaSalle
Chicago, IL 60604

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Joe Madden Ford, Inc.
COMPANY, INC.* /

2-2-01
Date

Signature: 
Name (print): Joseph Madden
Title: Pres.
Address: 311 Ravine
Hinsdale, IL
60521


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): J. Madden
Title: _____
Address: 311 Ravine
Hinsdale IL
60521
Ph. Number: 630-325-1972

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR KAYSER FORD ~~COMPANY~~, INC.*/

2/23/01
Date

Signature: 
Name (print): Patrick J. Baxter
Title: President
Address: 2303 West Beltline Highway
P.O. Box 1526
Madison, WI 53701-1526

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Patrick J. Baxter
Title: President
Address: Kayser Ford, Inc.
2303 West Beltline Highway
P.O. Box 1526
Madison, WI 53701-1526
Ph. Number: (608) 271-6000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction et al., relating to the Lenz Oil Services, Inc., Superfund Site.

Kranz Service, Inc., John Kranz and
Tom Kranz
FOR _____ COMPANY, INC.* /

3/7/01

Date

Signature: Shell J. Blewett
Name (print): Shell J. Blewett
Title: Attorney
Address: See Below

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Shell J. Blewett
Title: Attorney
Address: 321 S. Plymouth Court
Suite 1200
Chicago, IL 60604

Ph. Number: 312-360-8782

THE UNDERSIGNED PARTY enters into this consent Decree in the matter of the United States v. Alpha Construction, et al., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR Lakar Industries, Inc. d/b/a
Romines Standard Plaza & Truck

February 20, 2001
Date

Larry D. Romines Pres.
Signature: *M. A. Romines*
Name (print): M. A. Romines
Title: G. M.
Address: 21 Romines Dr.
MORRIS, IL 60450

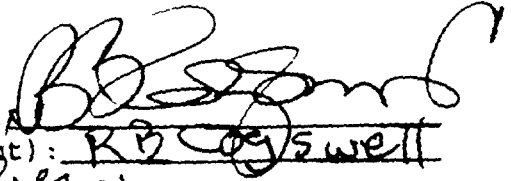
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Richard D. Foody
Title: Attorney
Address: Stellato & Schwartz, Ltd.
120 North LaSalle Street
34th floor
Chicago, IL 60602
Ph. Number: (312) 419-1011

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Laurel Motors, Inc., relating to the Lenz Oil Services, Inc., Superfund Site.

LAUREL MOTORS, INC.

February 23, 2001
Date

Signature: 
Name (print): Robert Cogswell
Title: President
Address: 200 East Ogden Avenue
Westmont, IL 60559

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction, relating to the Lenz Oil Services, Inc., Superfund Site.

Lewis
FOR University COMPANY, INC.*/

February 26, 2001
Date

Signature: Wayne J. Draudt
Name (print): Wayne J. Draudt
Title: Vice President for Business & Finance
Address: Lewis University
One University Parkway
Romeoville, IL 60446-2200


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Wayne J. Draudt
Title: Vice President for Business & Finance
Address: Lewis University
One University Parkway
Romeoville, IL 60446-2200
Ph. Number: 815.836.5235

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction, et. al., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR MADISON GAS AND ELECTRIC
COMPANY

2/13/01
Date

Signature: 
Name (print): Mark A. Frankel
Title: Vice President, General Counsel and Secretary
Address: Madison Gas and Electric
Post Office Box 1231
Madison, Wisconsin 53701-1231

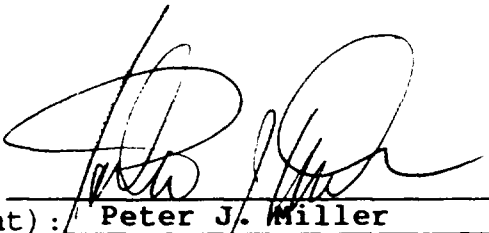
Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name (print): Mark A. Frankel
Title: Vice President, General Counsel and Secretary
Address: Madison Gas and Electric
Post Office Box 1231
Madison, Wisconsin 53701-1231
Ph. Number: (608) 252-5604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.*/
FOR McALLISTER EQUIPMENT COMPANY

Date

Signature: 
Name (print): Peter J. Miller
Title: Attorney and Agent
Address: 25 E. Washington, Suite 1000
Chicago, IL 60602

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Peter J. Miller
Title: Attorney and Agent
Address: Robbins, Salomon & Patt, Ltd.
25 E. Washington, Suite 1000
Chicago, IL 60602

Ph. Number: 312-782-9000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

McGill Manufacturing
FOR Company, Inc.

Feb 28 2001
Date

Signature: Jennifer A. Giblin
Name (print): Jennifer A. Giblin
Title: Counsel for McGill Manufacturing
Address: ShawPittman
2300 N Street, N.W.
Washington, DC 20037


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Jennifer A. Giblin
Title: Counsel for McGill Manufacturing
Address: ShawPittman
2300 N Street, N.W.
Washington, DC 20037
Ph. Number: 202-663-8814

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Northern Indiana Public Service, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.* /

2/23/01
Date

Signature: 
Name (print): Arthur E. Smith, Jr.
Title: Vice President and Environmental Counsel
Address: 801 E. 84th Ave
Merrillville IN 46410

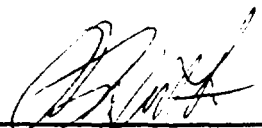
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Arthur E. Smith, Jr.
Title: Vice President and Environmental Counsel
Address: 801 E 84th Ave
Merrillville IN 46410
Ph. Number: (219) 647-5252

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. O-E ILLINOIS, INC., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR O-E ILLINOIS, INC. COMPANY, INC.* /

2.21.01
Date

Signature: 
Name (print): BARBARA HOLLONBY-LITTLE
Title: PRESIDENT
Address: P.O. BOX 450
PALOS PARK, IL 60464

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Lance KAHN
Title: Attorney
Address: 30 No. LaSalle St
Chicago, IL
60602
Ph. Number: 312 726 3700


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

OWENS-ILLINOIS, INC.

FOR _____, ~~COMPANY, INC. &~~

March 8, 2001

Date

Signature: 
Name (print): H. G. BRUSS
Title: ASSISTANT SECRETARY
Address: ONE SEAGATE
TOLEDO, OHIO 43666

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): NIRAV D. PARIKH
Title: LEGAL COUNSEL
Address: ONE SEAGATE
TOLEDO, OHIO 43666

Ph. Number: (419) 247-8707

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

PACKEY WEBB FORD

FOR _____ COMPANY, INC. *✱R*

2/25/01
Date

Signature: *[Signature]*
Name (print): J. B. Webb
Title: GP
Address: 1830 E. Roosevelt Trl.
Whitaker, FL 60187

Agent Authorized to Accept Service on Behalf of Above-signed Party:

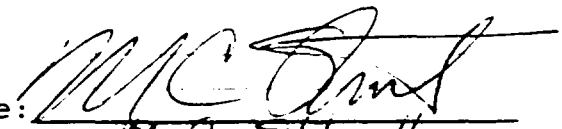
Name (print): J. B. Webb
Title: GP
Address: 1830 E. Roosevelt Trl.
Whitaker, FL 60187

Ph. Number: 630-668-8870

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. ALPHA CONSTRUCTION, ETAL, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.*/
FOR SETTLING PATRICK ENTITIES
IDENTIFIED ON ATTACHED SHEET.

2/24/01
Date

Signature: 
Name (print): M C Stilwell
Title: VICE PRESIDENT & COO
Address: 526 MAPLE DRIVE
SCHAUMBURG IL 60173

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name (print): JOSEPH R. POOLENSKI, JR.
Title: ATTORNEY FOR PATRICK
Address: ROSENTHAL AND SCHANFIELD, P.C.
55 E. MONROE ST., 40TH FLOOR
CHICAGO, ILLINOIS 60603
Ph. Number: (312) 899-5591

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alpha Construction, et al., relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.*/

PENSKE TRUCK LEASING CO., L.P.

BY: PENSKE TRUCK LEASING CORPORATION

General Partner

2/20/01

Date

Signature: 

Name (print): James A. Rosen

Title: Vice President and General Counsel

Address: Route 10 - Green Hills

P.O. Box 563

Reading, PA 19603

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): CT Corporation

Title: _____

Address: 1209 Orange Street

Wilmington, DE 19801

Ph. Number: (610) 775-6325

THE UNDESIGNED PARTY enters into this Consent Decree in the matter of
United States of America, and the State of Illinois v. Alpha Construction, et.al., relating to the
Lenz Oil Services, Inc., Superfund Site.

FOR Quebecor World KRI Inc., f/k/a KRI, Inc.,
f/k/a Krueger Ringier, Inc., f/k/a W. F. Hall
Printing Company on behalf of itself and those
entities described by the United States and the
State of Illinois as W. F. Hall Printing Company
and Chicago Rotoprint Company

March 28, 2001

Signature: 

Name (print): Marc L. Reisch

Title: President

Address: 340 Pemberwick Road
Greenwich, CT 06831

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CT Corporation
208 S. LaSalle Street
Suite 814
Chicago, Illinois 60604
312-263-1414

THE UNDESIGNED PARTY enters into this Consent Decree in the matter of
United States of America and the State of Illinois v. Alpha Construction, et.al., relating to the
Lenz Oil Services, Inc., Superfund Site.

FOR Quebecor World RAI Inc., f/k/a RAI, Inc.,
f/k/a Ringier America, Inc., f/k/a W. A.
Krueger Co., on behalf of itself and those
entities described by the United States and
the State of Illinois as Krueger Pontiac and
Ringier America - Pontiac Division

March 28, 2001

Signature: Marc L. Reisch

Name (print): Marc L. Reisch

Title: President

Address: 340 Pemberwick Road
Greenwich, CT 06831

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CT Corporation
208 S. LaSalle Street
Suite 814
Chicago, Illinois 60604
312-263-1414

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.*/

Rexam Beverage Can Company
for
American National Can Company

2-5-01
Date

Signature: Frank C. Brown
Name (print): Frank C. Brown
Title: Vice President
Address: 4201 Congress Street
Charlotte, NC 28209

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Charles Coyle
Title: Registered Agent
Address: Charles Coyle Company
8216 Shadybrook Dr, Suite B
Marietta, GA 30066-6215
Ph. Number: 1-800-211-8645

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR _____ COMPANY, INC.* /

FOR SCHWINDAMAN MOTORS, INC.

2-22-2001
Date

Signature: Raymond J. Schwindaman
Name (print): RAYMOND J. SCHWINDAMAN
Title: _____
Address: 2018 MANADA LANE
PERU ILL 61354

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Shel J. Flewels
Title: _____
Address: 321 So. Plymouth Suite 1201
CHICAGO ILL 60604-3990

Ph. Number: 312 360 8782

and the State of Illinois
THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States, v. Alpha Construction et al, relating to
the Lenz Oil Services, Inc., Superfund Site.

FOR Sears, Roebuck and Co. COMPANY, INC. */

2/22/01
Date

Signature: Victoria S. Berghel
Name (print): VICTORIA S. BERGHEL
Title: ASSOCIATE GENERAL COUNSEL
Address: SEARS, ROEBUCK AND CO.
3333 BEVERLY ROAD
HOFFMAN ESTATES, IL 60179

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name (print): _____
Title: Associate General Counsel Real Estate
Address: SEARS, ROEBUCK AND CO.
3333 Beverly Road
Hoffman Estates, Illinois 60179
Ph. Number: 847-286-9212

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the Lenz Oil Services, Inc., Superfund Site.

FOR UNION SPECIAL CORPORATION
COMPANY, INC.*/

2/26/01
Date

Signature: Terence A. Hiltas
Name (print): Terence A. Hiltas
Title: President, COO & CFO
Address: One Union Special Plaza
Huntley, IL 60142

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Haruo Ariga
Title: Secretary
Address: One Union Special Plaza
Huntley, IL 60142

Ph. Number: 847 669 5101

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Zellmer Truck Lines Inc., relating to the Lenz Oil Services, Inc., Superfund Site:

FOR ZELLMER TRUCK LINES COMPANY, INC.*/

Feb 19, 2001
Date

Signature: Kent Zellmer
Name (print): Kent Zellmer
Title: Vice President
Address: Zellmer Truck Lines Inc.
Box 606
Granville, IL 61326

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____